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PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

PHASE IV—CLC regulations on reporting by retail firms; effective 3–26–74 11274

PESTICIDES—EPA proposal on shipments for experimental use; comments by 4–26–74 11306

SCHOOL MEAL PROGRAMS—
USDA rules on alternates for current food requirements; effective 6–30–74 11296
USDA proposal on "textured meat alternates"; comments by 4–26–74 11296

AIRPORT "MOVEMENT AREAS"—FAA proposes regulatory definition; comments by 6–10–74 11256

AIRCRAFT NOISE—FAA proposes fleet noise level requirements for turbojet transports; comments by 6–28–74 11302

NEW ANIMAL DRUGS—FDA proposal on determination of DES in edible tissues of cattle and sheep; comments 4–26–74 11299

DRUGS—FDA proposal regarding misleading proprietary or trade names; comments by 5–28–74 11298

BIOLOGICAL PRODUCTS—FDA proposal on general safety test; comments by 4–26–74 11301

BANK HOLDING COMPANIES—FRS amends regulations on real and personal property leasing (2 documents); effective 4–17–74 11254

REAL ESTATE—FHLBB proposal on loans in excess of 90 percent of value; comments by 4–30–74 11310

FINANCIAL ASSISTANCE—SBA revises size standards; effective 3–27–74 11256

REGISTERED INVESTMENT COMPANIES—SEC proposal on exemption of certain joint transactions from application requirements; comments by 5–10–74 11312

PART II:

PHASE IV—CLC republishes health care regulations; effective 3–20–74 11375

(Continued inside)

March 27, 1974—Pages 11239–11405

ACETIC AND PROPIONIC ACIDS—EPA establishes tolerances and exemptions; effective 3–27–74 11268

IMPORTATION—USDA proposal on use of Import Quarantine Facilities; comments by 4–29–74 11254

MEETINGS—

Interior Department: Bonneville Power Administration, 4–29–74 11315
DoD: Defense Science Board, 4–18 and 4–19–74 11315
Commerce Department: Electronic Instrumentation Technical Advisory Committee, 4–9–74 11317
HEW: Safety and Occupational Health Study Section, 4–18 and 4–19–74 11323
National Advisory Council on Education Professions Development, 4–19–74 11325
DoT: Towing Industry Advisory Committee, 4–17 and 4–18–74 11326
Administrative Conference of the U.S.: Committee on Agency Organization and Personnel, 4–3–74 11326
FCC: National Industry Advisory Committee, Aeronautical Communications Services Subcommittee, 4–11–74 11340
National Foundation on the Arts and the Humanities, Special Projects Advisory Panel, 3–30 and 3–31–74 11350
DIBA: Computer Systems Technical Advisory Committee, 4–10–74 11322

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Contents

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notices

Agency Organization and Personnel Committee; meeting 11326

AGRICULTURAL MARKETING SERVICE

Rules and Regulations

Cotton Research and Promotion Act; miscellaneous and technical amendments to rules of practice 11253

Handling of peaches grown in Utah; termination of marketing order 11253

Proposed Rules

Milk in North Texas and certain other marketing areas; partial recommended decision and opportunity to file written exceptions on amendments to tentative marketing agreement and order 11275

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Crop Insurance Corporation; Food and Nutrition Service.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules and Regulations

Scabies in cattle; release of areas quarantined 11254

Proposed Rules

Importation and inspection of containers for certain animals, poultry, and products; requirements for use of import quarantine facilities 11295

ATOMIC ENERGY COMMISSION

Notices

Advisory Committee on Reactor Safeguards; meeting 11328

Delmarva Power & Light Co. and Philadelphia Electric Co.; notice of prehearing conference 11326

LMFBR Base Program; determination regarding pending preparation of NEPA impact statement 11326

New York State Atomic Space and Development Authority; amendment of license 11329

Oklahoma State University; order terminating facility license 11328

Public Service Electric and Gas Co.; construction permits and facility licenses 11329

BONNEVILLE POWER ADMINISTRATION

Notices

Draft supplement to the fiscal year 1975 program statement; meeting 11315

CIVIL AERONAUTICS BOARD

Notices

Hearings, etc.:

American Airlines, Inc 11330

Laker Airways Ltd 11331

Southern Airways, Inc 11331

CIVIL SERVICE COMMISSION

Rules and Regulations

Excepted service; Administrative Office of the United States Courts 11247

Proposed Rules

Merit system of personnel administration; administration of standards 11304

Notices

Federal Employees Pay Council; meeting 11332

Grants and revocations of authority to make noncareer executive assignments:

Agriculture Department (2 documents) 11331

Army Department (2 documents) 11331

Health, Education and Welfare Department (2 documents) 11332

Housing and Urban Development Department (3 documents) 11332

Interior Department (3 documents) 11332

Justice Department (2 documents) 11332

Office of Economic Opportunity (2 documents) 11333

Veterans Administration 11333

President, Federal City College; listing of manpower shortage 11333

COAST GUARD

Rules and Regulations

Lifesaving equipment; safety features for handcranking power-driven winches 11273

Security zones; Hampton Roads, James River, Newport News, Va. 11258

Notices

International voyage load lines; implementation of 1973 Act 11325

Towing Industry Advisory Committee; meeting 11326

COMMERCE DEPARTMENT

See Domestic and International Business Administration; Maritime Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service.

CONSUMER PRODUCT SAFETY COMMISSION

Notices

Shock, fire, and other hazards from television receivers; public hearing; correction 11333

COST OF LIVING COUNCIL

Rules and Regulations

Phase IV price regulations:

Health care; corrections and supplemental amendments 11370

Reporting by retail firms 11274

DEFENSE DEPARTMENT

Notices

Defense Science Board; meeting 11315

DISEASE CONTROL CENTER

Notices

Safety and Occupational Health Study Session; meeting 11323

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Notices

Computer Systems Technical Advisory Committee; meeting 11322

Electronic Instrumentation Technical Advisory Committee; meeting 11317

EDUCATION OFFICE

Notices

Drug abuse prevention and early intervention projects; closing date for receipt of applications 11324

Indian elementary and secondary school assistance; closing date for receipt of applications 11324

National Advisory Council on Education Professions Development; meeting 11325

ENVIRONMENTAL PROTECTION AGENCY

Rules and Regulations

Tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities; acetic and propionic acids 11268

Proposed Rules

Certification of pesticide applicators; extension of comment period 11305

Shipments of pesticides for experimental use; issuance of permits 11306

Notices

Amchem Products, Inc.; extension of temporary tolerances 11333

BASF Wyandotte Corp.; extension of temporary tolerances 11333

Minnesota Air Quality Implementation Plan; cancellation of public hearing 11338

Motor vehicle exhaust emission retrofit devices; voluntary retrofit evaluation program 11334

FARMERS HOME ADMINISTRATION

Notices

South Carolina; designation of emergency areas 11317

(Continued on next page)

FEDERAL AVIATION ADMINISTRATION

Rules and Regulations

Restricted areas:
- Change in using agency; correction — 11258
- Alteration — 11258

Terminal control area at Cleveland, Ohio; designation — 11256
VOR Federal airway; extension — 11258

Proposed Rules

Civil aircraft fleet noise requirements — 11302
Federal airways; alteration — 11302
Operating control towers; operation at airports — 11301

FEDERAL COMMUNICATIONS COMMISSION

Proposed Rules

Educational broadcasting; order extending time for filing reply comments — 11309

Notices

National Industry Advisory Committee Aeronautical Communications Services Subcommittee, meeting — 11340

Hearings, etc.:
- Juniper Broadcasting, Inc — 11339
- Windham Broadcasting Group and Nutmeg Broadcasting Co — 11340

FEDERAL CROP INSURANCE CORPORATION

Notices

Canning and freezing peas, Idaho and Utah; extension of closing date for filing of applications for the 1974 crop year — 11317

FEDERAL ENERGY OFFICE

Proposed Rules

Puerto Rico; further notice regarding price regulations and hearing — 11314

FEDERAL HOME LOAN BANK BOARD

Proposed Rules

Federal Savings and Loan Insurance Corp.; loans in excess of 90 percent of value — 11310

FEDERAL INSURANCE ADMINISTRATION

Rules and Regulations

National flood insurance program:
- Areas eligible for sale of insurance; status of participating communities — 11259
- Identification of special hazard areas; list of communities — 11259

FEDERAL POWER COMMISSION

Proposed Rules

National rates for future sales of natural gas; issuance of revised staff nationwide cost study and staff study of American Gas Association reserve additions — 11310

Notices

Hearings, etc.:
- Algonquin Gas Transmission Co. (2 documents) — 11341
- Arkansas Louisiana Gas Co — 11342
- Casade Natural Gas Corp — 11342
- Colorado Interstate Gas Co. and Colorado Oil and Gas Corp — 11342
- Delmarva Power and Light Co — 11343
- Distrigas Corp. et al — 11343
- Duke Power Co. (2 documents) — 11343
- Interstate Power Co — 11343
- Iowa Public Service Co — 11344
- LVO Corp — 11344
- Maine Yankee Atomic Power Co — 11345
- Niagara Mohawk Power Corp — 11345
- Public Service Co. of Oklahoma — 11345
- Rumford Falls Power Co — 11345
- Jessie I. Smith — 11346
- Southern California Edison Co — 11346
- Vanceburg, Kentucky, and Vanceburg Light, Heat and Power System — 11346

FEDERAL RESERVE SYSTEM

Rules and Regulations

Bank holding companies; nonbanking activities (2 documents) — 11254

Notices

First Jersey National Corp — 11348
Order approving formation of Bank Holding Co. and acquisition of certain assets:
- Adair Corp — 11347
- Byers State Bankshares, Inc — 11347
- Chemical Financial Corp — 11348
- McNee, Inc — 11349

FOOD AND DRUG ADMINISTRATION

Proposed Rules

Biological products; revision of general safety test — 11301
Diethylstilbestrol (DES) in edible tissues of cattle and sheep; revocation of test methods for determination of residue levels — 11299
Labeling and misbranding of drugs; misleading proprietary or trade names — 11298

Notices

Certain antihistaminic drugs used in allergy; drug efficacy study implementation; followup notice; reevaluation, correction — 11323
Diesthylstilbestrol (DES) for use in cattle and sheep; notice to holders of new animal drug applications — 11323
Vineland Chemical Co.; filing of petition for food additive — 11324

FOOD AND NUTRITION SERVICE

Rules and Regulations

Availability of information to the public; transfer of Puerto Rico and Virgin Islands from Southeast to Northeast region — 11253
General nutrition information; food stamp program — 11252
National school lunch program; requirements for meals — 11247
Realignment of regional boundaries:
- Donation of foods for use in the U.S., territories, and possessions — 11252
- National school lunch program — 11247
- School breakfast and nonfood assistance programs and State administrative expenses — 11251
- Special food service program for children — 11250
- Special supplemental food program for women, infants, and children — 11252

Proposed Rules

National School Lunch Program and Special Food Service Program for Children; requirements for meals — 11296

GENERAL ACCOUNTING OFFICE

Rules and Regulations

Freight transportation services furnished to account of U.S.; acceptance and use of government bill of lading — 11273

Notices

Revision of U.S. Government bill of lading and U.S. Government Transit Bill of Lading (GBL) — 11349

GENERAL SERVICES ADMINISTRATION

Rules and Regulations

Procurement forms; new edition of standard forms — 11268

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Disease Control Center; Education Office; Food and Drug Administration.

Notices

Office for Civil Rights; statement of organization, functions, and delegations of authority — 11325

INTERIOR DEPARTMENT

See Bonneville Power Administration; Land Management Bureau.

INTERSTATE COMMERCE COMMISSION

Notices

Assignment of hearings — 11363
Missouri Pacific Railroad Co.; exemption of the mandatory car service rules — 11363
Motor carrier alternate route deviation notices — 11363
Motor carrier applications and certain other proceedings — 11364
Motor carrier board transfer proceedings — 11368
Northeastern Railroad investigation; review of the Secretary of Transportation's rail service report; correction — 11369
Reading Co.; order rerouting or diverting traffic — 11369
Texas and Pacific Railway Co.; order to operate trains of National Railroad Passenger Corp. (AMTRAK) — 11369

LAND MANAGEMENT BUREAU

Notices

Nevada; proposed withdrawal and reservation of lands — 11315
New Mexico; Transwestern Pipeline Co. (3 documents) — 11316
Prineville District Advisory Board; meeting — 11316
Wyoming; application — 11316

MANAGEMENT AND BUDGET OFFICE

Notices

Request for clearance of reports — 11350

MARITIME ADMINISTRATION

Notices

List of free world and Polish flag vessels arriving in Cuba since January 1, 1963 ... 11317

NATIONAL BUREAU OF STANDARDS

Notices

Commercial standards; intent to withdraw ... 11319

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notices

Special Projects Advisory Panel; meeting ... 11350

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Coronado Productions Inc.; final disposition of permit application ... 11319
Dr. Howard E. Winn; issuance of permit for marine mammals ... 11320
Lafayette Park Zoo and Saint Paul Como Zoo; receipt of applications for public display permits ... 11320
Thomas R. Loughlin; receipt of application for scientific research permit ... 11320

NATIONAL TECHNICAL INFORMATION SERVICE

Notices

Government-owned inventions; availability for licensing ... 11321

SECURITIES AND EXCHANGE COMMISSION

Proposed Rules

Certain joint transactions involving registered investment companies; exemption from application requirements of Rule 17d–1 ... 11312

Notices

Hearings, etc.:
Braniff International Corp. (3 documents) ... 11350
Cincinnati Milacron Inc ... 11351
GTI Corp ... 11351
Metropolitan Edison Co ... 11351
National Alfalfa Dehydrating and Milling Co ... 11352
Thiokol Corp. (3 documents) ... 11352

SMALL BUSINESS ADMINISTRATION

Rules and Regulations

Small business size standards; energy crisis provisos for use in determining size of loan applicant adversely affected by shortage of energy or materials ... 11256

Notices

Assistant Regional Directors for Finance and Investment et al.; delegation of authority (2 documents) ... 11352
Texas; declaration of disaster loan area ... 11362

TARIFF COMMISSION

Notices

Conversion of TSUS into format of the Brussels Tariff nomenclature; tentative hearing schedule ... 11362

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration.

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

4 CFR

52 ... 11273

5 CFR

213 ... 11247

PROPOSED RULES:

900 ... 11304

6 CFR

150 (2 documents) ... 11274, 11376

7 CFR

210 (2 documents) ... 11247
220 (2 documents) ... 11249
225 (2 documents) ... 11250
246 ... 11252
250 ... 11252
270 ... 11252
295 ... 11253
920 ... 11253
1205 ... 11253

PROPOSED RULES:

210 ... 11296
225 ... 11296
1121 ... 11275
1126 ... 11275
1127 ... 11275
1128 ... 11275
1129 ... 11275
1130 ... 11275

9 CFR

73 ... 11254

PROPOSED RULES:

92 ... 11295

10 CFR

PROPOSED RULES:

212 ... 11314

12 CFR

225 (2 documents) ... 11254

PROPOSED RULES:

563 ... 11310

13 CFR

121 ... 11256

14 CFR

71 (3 documents) ... 11256–11258
73 (2 documents) ... 11258

PROPOSED RULES:

1 ... 11301
71 ... 11302
91 ... 11301

17 CFR

PROPOSED RULES:

270 ... 11312

18 CFR

PROPOSED RULES:

2 ... 11310
154 ... 11310
157 ... 11310

21 CFR

PROPOSED RULES:

1 ... 11298
121 ... 11299
135 ... 11299
610 ... 11301
620 ... 11301

24 CFR

1914 ... 11259
1915 ... 11259

33 CFR

127 ... 11258

40 CFR

180 ... 11268

PROPOSED RULES:

171 ... 11305
172 ... 11306

41 CFR

1–16 ... 11268

46 CFR

160 ... 11273

47 CFR

PROPOSED RULES:

73 ... 11309

REMINDERS

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items published after October 1, 1972, that were eligible.

page no. and date

APRIL 1

USDA/Packers and Stockyards Administration—Packers engaging in the activity or practice of custom feeding livestock; extension for filing comments 9454; 3–11–74

HEW—Office of Education proposal for Library research and demonstration. 8927; 3–7–74

HEW—Office of Education proposal concerning grants for training in librarianship 8334; 3–5–74

Department of State—Proposed limitation on issuance and extension of passports 8165; 3–4–74

NHTSA—Proposed rules on Air Brake Systems 7966; 3–1–74

FAA—Proposal regarding designation of altitude ceilings 7949; 3–1–74

HEW—Office of Education proposal on criteria for recognition of national accrediting agencies and associations 7946; 3–1–74

Corps of Engineers/Army Department—Permits for activities in navigable waters or ocean waters; policy, practice, and procedure 7942; 3–1–74

DoD—Proposal on permits for activities in navigable waters and ocean waters. 7942; 3–1–74

DoT/Pipeline Safety Office—Pipe transported by railroad; use qualification. 6126; 2–19–74

DoT/NHTSA—Air brake systems; amendment of standard's effective date, brake actuation times, and road and dynamometer test as they apply to service brake systems and emergency stopping performance of most vehicle types 7966; 3–1–74

EPA—Establishment of a tolerance for combined residues of the insecticide chlordimeform 7929; 3–1–74

FCC—Establishment of private operational-fixed microwave radio service. 7805; 2–28–74

HEW/Education Office—Nationally recognized accrediting agencies and associations; criteria for recognition. 7946; 3–1–74

Treasury Department/Customs Service—Shipments of books; certain information on invoices 7799; 2–28–74

—Vessels in foreign and domestic trades; documents to be filed upon entry and clearance 7799; 2–28–74

Interior Department/National Park Service—Prohibition of pets on trails of Muir Woods National Monument, California 7942; 3–1–74

Justice Department—Anonymous testing by laboratories; modification of order form requirements 7800; 2–28–74

Transportation Department—Lamps, reflective devices, and associated equipment standards 3833; 1–30–74

CLC—Phase IV; price and health care forms 9768; 3–13–74; 9987: 3–15–74

APRIL 3

Department of Agriculture—ASSC proposed determination for 1974–75 Peanut Marketing Year 8165; 3–4–74

SSA—Proposed principles of reimbursement for provider costs and for services by hospital-based physicians under the Federal Health Insurance for the Aged and Disabled 8166; 3–4–74

EPA—Proposed revision of New York Implementation Plan 8175; 3–4–74

APRIL 4

Department of Agriculture—Proposed determinations on 1975 National Allotment for Wheat 8334; 3–5–74

FAA—Proposed rule to revoke west alternate to VOR Federal Airway 37 between Columbia, S.C. and Fort Mill, S.C. 8350; 3–5–74

FAA—Proposed designation of a 700 ft. transition area at Thibodaux, La. 8350; 3–5–74

EPA—Public hearing on California and Arizona compliance schedules. 8351; 3–5–74

APRIL 5

DoT/Coast Guard—Drawbridge operation regulations regarding Savannah River, Georgia 7948; 3–1–74

EPA—Navigable Water Quality Standards; Oregon 4486; 2–4–74

FCC—Antenna structures; high intensity lighting 6130; 2–19–74

USDA/APHIS—Meat products and poultry products; net weight labeling. 33308; 12–3–73

Department of Transportation—Coast Guard proposal concerning the operation of drawbridge at Savannah River, Ga 7948; 3–1–74

HEW—Office of Education proposed rule concerning Supplemental Educational Opportunity Grants Program 8624; 3–6–74

FAA—Proposed alteration of Rockland, Maine 700 ft. transition area 8631; 3–6–74

FAA—Proposed designation of restricted areas adjacent to Fort Polk, La. 8631; 3–6–74

Department of Labor—OSHA extends comment period on roll-over protective structures for agricultural tractors 8633; 3–6–74

ICC—Proposed revision to the uniform system of accounts for all modes of transportation regulated by the Commission 9204; 3–8–74

ICC—Proposed revision of the uniform system of accounts for all modes of transportation regulated by the Commission 9469; 3–11–74

ICC—Accounting for income taxes; interperiod tax allocation (deferred taxes) 9469; 3–11–74

APRIL 6

Justice Department/Immigration and Naturalization Service—U.S. Citizen Identification Cards; issuance procedures 8924; 3–7–74; 9544; 3–12–74

Weekly List of Public Laws

This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statutes citation. Subsequent lists will appear every Wednesday in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

H.J. Res. 905 ..... Pub. Law 93–252
Extending the filing date of the 1974 Joint Economic Committee report
(March 16, 1974; 88 Stat. 49)

H.R. 8245 ..... Pub. Law 93–253
Reorganization Plan No. 2 of 1973, amendments
(March 16, 1974; 88 Stat. 50)

Next Week's Hearings

APRIL 1

Commission on Revision of the Federal Court Appellate System—Creation of National division of U.S. Court of Appeals; to be held in Washington, D.C. 7983; 3–1–74

National Park Service—Death Valley National Monument, wilderness, proposal; to be held in Las Vegas, Nevada 7815; 2–28–74

Commission on Revision of the Federal Court Appellate System—Proposed National Division of the U.S. Court of Appeals; to be held in Washington, D.C. 10010; 3–15–74

APRIL 2

Commission on Revision of the Federal Court Appellate System—Creation of National division of U.S. Court of Appeals; to be held in Washington, D.C 7983; 3–1–74

Fish and Wildlife Service—Mattamuskeet, Swanquarter, Pea Island, and Cedar Island National Wiildlife Refuges; to be held in Swanquarter, North Carolina 7815; 2–28–74

Commission on Revision of the Federal Court Appellate System—Proposed National Division of the U.S. Court of Appeals; to be held in Washington, D.C 10010; 3–15–74

APRIL 3

EPA—Arizona compliance schedules; to be held in Phoenix, Ariz 8351; 3–5–74

Consumer Product Safety Commission—Use of sampling plans in mandatory safety standards; to be held in Washington, D.C. 8376; 3–5–74

National Park Service—Death Valley National Monument; wilderness proposal; to be held in San Bernardino, California 7815; 2–28–74

APRIL 4

Mining Enforcement and Safety Administration—Illumination in underground coal mines; to be held in Washington, D.C.... 8618; 3–6–74

EPA—California compliance schedules; to be held in Los Angeles, Calif. 8351; 3–5–74

APRIL 5

Mining Enforcement and Safety Administration—Certain protective structures for mobile equipment; to be held in Washington, D.C..... 8618; 3–6–74

Next Week's Meetings

MARCH 31

Agriculture Department—Cibola National Forest Grazing Advisory Board to be held at Albuquerque, New Mexico (open)..... 9848; 3–14–74

HEW—NIH: Colon-Rectum Cancer Advisory Committee to be held at Houston, Texas (open with restrictions). 7821; 2–28–74

HEW—NIH: Committee on Cancer Immunobiology to be held at Bethesda, Maryland (closed).... 7822; 2–28–74

APRIL 1

Agriculture Department—Forest Service: Unita National Forest G–10 Grazing Advisory Board to be held at Provo, Utah (open)..... 8945; 3–7–74

Environmental Protection Agency—President's Air Quality Advisory Board to be held at Washington, D.C. (open). 10179; 3–18–74

HEW—FDA: Panel on Review of Obstetrical and Gynecology Devices to be held at Washington, D.C. (open with restrictions)..... 10924; 3–22–74

HEW—FDA: Panel on Review of Sedative, Tranquilizer, and Sleep Aid Drugs to be held at Washington, D.C. (open with restrictions)..... 10924; 3–22–74

HEW—NIH: Committee on Cancer Immuno-Biology to be held at Bethesda, Maryland (closed).... 7822; 2–28–74

Interior Department—National Park Service: Committee for the Recovery of Archaeological Remains to be held at Washington, D.C. (open)....9845; 3–14–74

APRIL 2

Advisory Council on Historic Preservation to be held at Washington, D.C. (open with restrictions)..... 10316; 3–19–74

Agriculture Department—Manti Division G–10 Advisory Board to be held at College of Eastern Utah (open). 10636; 3–21–74

Agriculture Department—Modoc National Forest Grazing Advisory Board to be held at Alturas, California (open)..... 9849; 3–14–74

Commission on the Review of the National Policy Toward Gambling to be held at Washington, D.C. (open). 10950; 3–22–74

DoD—Department of Defense Wage Committee to be held at Washington, D.C. (closed)..... 10919; 3–22–74

Environmental Protection Agency—President's Air Quality Advisory Board to be held at Washington, D.C. (open). 10179; 3–18–74

HEW—FDA: Panel on Review of Obstetrical and Gynecology Devices to be held at Washington, D.C. (closed). 10924; 3–22–74

HEW—FDA: Panel on Review of Sedative, Tranquilizer, and Sleep Aid Drugs to be held at Washington, D.C. (closed)..... 10924; 3–22–74

HEW—FDA: Panel on Review of Viraf Vaccines and Rickettsial Vaccines to be held at Bethesda, Maryland (open with restrictions).... 10924; 3–22–74

HEW—National Heart and Lung Institute, Hypertension Information and Education Advisory Committee to be held at Bethesda, Maryland (open). 6753; 2–22–74

HEW—NIH: Committee on Cancer Immunobiology to be held at Bethesda, Maryland (closed).... 7822; 2–28–74

HEW—NIH: National Cancer Institute, President's Cancer Panel to be held at Bethesda, Maryland (open)... 6753; 2–22–74

Interior Department—National Park Service: Committee for the Recovery of Archaeological Remains to be held at Washington, D.C. (open)..... 9845; 3–14–74

APRIL 3

Advisory Council on Historic Preservation to be held at Washington, D.C. (open with restrictions)..... 10316; 3–19–74

Commerce Department—Federal Information Processing Standards Task Group 13 to be held at Gaithersburg, Maryland (open).... 10003; 3–15–74

HEW—FDA: National Advisory Drug Committee to be held at Rockville, Maryland (open).... 10924; 3–22–74

HEW—FDA: Panel on Review of Dentifrices and Dental Care Agents to be held at Rockville, Maryland (open with restrictions)..... 10924; 3–22–74

HEW—FDA: Panel on Review of Viral Vaccines and Rickettsial Vaccines to be held at Bethesda, Maryland (closed)..... 10924; 3–22–74

HEW—NIH: Diagnostic Research Advisory Group Subcommittee on Breast Cancer Demonstration Projects to be held at Bethesda, Maryland (open). 10462; 3–20–74

Transportation Department—New York Harbor Vessel Traffic System Advisory Committee to be held at Governors Island, New York (open)..... 9691; 3–13–74

APRIL 4

Agriculture Department—Routt National Forest Multiple Use Advisory Committee to be held at Steamboat Springs, Colorado (open).... 10637; 3–21–74

FCC—Panel 3 Committee of the Cable Television Technical Advisory Committee to be held at Washington, D.C. (open)..... 10483; 3–20–74

HEW—FDA: National Advisory Drug Committee to be held at Rockville, Maryland (open).... 10924; 3–22–74

HEW—FDA: Panel on Review of Dentifrices and Dental Care Agents to be held at Rockville, Maryland (closed). 10924; 3–22–74

HEW—National Institute of Allergy and Infectious Diseases: Transplantation and Immunology Committee to be held at Bethesda, Maryland (open with restrictions)..... 7824; 2–28–74

HEW—NIH: Diagnostic Research Advisory Group to be held at Bethesda, Maryland (open with restrictions). 10462; 3–20–74

Interior Department—Bureau of Land Management: Albuquerque District Advisory Board to be held at Farmington, New Mexico (open). 10634; 3–21–74

Labor Department—Advisory Committee on Construction Safety and Health to be held at Washington, D.C. (open)..... 10193; 3–18–74

State Department—Government Advisory Committee on International Book and Library Programs to be held at Washington, D.C. (open). 10456; 3–20–74

APRIL 5

Agriculture Department—Forest Service: Rio Grande National Forest Grazing Advisory Board to be held at Monte Vista, Colorado (open). 8945; 3–7–74

Agriculture Department—Forest Service: San Juan National Forest Multiple Use Advisory Committee to be held at Durango, Colorado (open). 8945; 3–7–74

DoD—Department of the Army Historical Advisory Committee to be held at Washington, D.C. (open). 8941; 3–7–74

HEW—FDA: Panel on Review of Laxative, Anti-diarrheal, Emetic, and Anti-emetic Drugs to be held at Rockville, Maryland (open with restrictions)..... 10925; 3–22–74

HEW—National Institute of Allergy and Infectious Diseases: Transplantation and Immunology Committee to be held at Bethesda, Maryland (open with restrictions)..... 7824; 2–28–74

HEW—NIH: Committee on Cytology Automation to be held at Bethesda, Maryland (open with restrictions). 9566; 3–12–74

HEW—NIH: Diagnostic Research Advisory Group to be held at Bethesda, Maryland (closed).... 10462; 3–20–74

Interior Department—Bureau of Land Management: Albuquerque District Advisory Board to be held at Farmington, New Mexico (open). 10634; 3–21–74

Labor Department—Advisory Committee on Construction Safety and Health to be held at Washington, D.C. (open)..... 10193; 3–18–74

State Department—Secretary of State's Advisory Committee on Private International Law, Study Group on International Sale of Goods to be held at New York, New York (open). 8639; 3–6–74

APRIL 6

HEW—FDA: Panel on Review of Laxative, Anti-diarrheal, Emetic, and Anti-emetic Drugs to be held at Rockville, Maryland (closed).... 10925; 3–22–74

Interior Department—Forest Service: Tierra Amarilla Grazing Division Advisory Board to be held at Tres Piedras, New Mexico (open). 7818; 2–24–74

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Administrative Office of the United States Courts

Part 213 is amended to show that the position of Assistant Director, Office of the Director, is no longer excepted under Schedule C.

Effective on March 27, 1974, § 213.3372 is revoked.

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6964 Filed 3-26-74; 8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. 17]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Realignment of Regional Boundaries

The regulations governing the National School Lunch Program (38 FR 17722) are amended to transfer Puerto Rico and the Virgin Islands are hereby transferred from the Southeast Region to the Northeast Region.

It is impracticable and unnecessary to follow the proposed rulemaking and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the National School Lunch Program regulations are amended as follows:

In § 210.20, paragraphs (a) and (b) are revised to read as follows:

§ 210.20 **Program information.**

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Georgia 30309.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.555 National Archives Reference Services)

Effective date. This amendment is effective March 11, 1974.

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-7112 Filed 3-26-74; 8:45 am]

NATIONAL SCHOOL LUNCH PROGRAM; SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES; SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

Requirements for Meals

On April 12, 1973, there was published in the FEDERAL REGISTER (38 FR 9234), a notice of proposed rulemaking to amend the regulations governing the operations of the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), and the Special Food Service Program for Children (7 CFR Part 225) to authorize the use of alternate foods to be specified in an appendix "A" to each regulation. Three food items were proposed for use as alternates for food components specified in the respective meal requirements of these regulations. Responses to the proposed amendments and appendices were received from 110 individuals. The principal comments and the action taken on the proposed amendments and appendices are discussed below.

1. A few respondents expressed opposition to the regulation amendments that would authorize use of an appendix procedure as a means of proposing and approving new foods for use in the child nutrition programs. After studying these comments, it appears that these respondents objected to a particular food item proposed for approval, and that this opposition carried over to the entire concept of using an appendix procedure. Consequently, no change was made in the method of proposing and approving new foods.

2. The comments received contained substantial opposition to the use of the three food types proposed for approval. The Department, however, after considering all the comments, "for" and "against," and after weighing all the evidence at its disposal, has ruled in favor of optional use of these foods. One factor in this decision is that the use of these foods by school food authorities is strictly *optional*. No school food authorities are required to use these foods in their food service programs. Another factor is that by permitting use of these foods the Department will be assisting schools to maintain the nutritional quality of meals served, and at the same time will help schools keep meal prices down.

3. The comments on the different foods are discussed below. Paragraphs a, b, and c discuss those comments germane to more than one food type, and paragraphs d, e, and f discuss those comments germane to a specific food type:

a. Some respondents maintained that there was no nutritional need for "textured vegetable protein products" and "enriched macaroni with fortified protein" products in child nutrition programs. The Department does not believe that this contention represents a sufficient showing of cause for not approving the use of these products. Items fabricated in each group of products have been in use on a widespread basis. The "textured vegetable protein products" and the "enriched macaroni with fortified protein" products are each equal to or of greater nutritional value than the several meat alternate food items specified in the meal requirements of the regulations. By permitting the use of these new foods, the Department is expanding its efforts to offer schools flexibility in planning menus by crediting a variety of nutritious foods in meeting meal requirements.

b. A large number of respondents stated that the use of "enriched macaroni with fortified protein" and "formulated grain-fruit products" was incompatible with children's nutrition education. The Department is well aware of the need of nutrition education and consequently has requested each company which manufactures these products to distribute nutrition education materials relating to their product. This information will explain the difference between the fortified product and similar nonfortified products that may be commercially available. Additionally, the Department recommends that each school utilizing an alternate food include information on the product in that school's nutrition education program.

c. A number of respondents made the point that "textured vegetable protein products" and "enriched macaroni with fortified protein" products should be used as supplements to, and not substitutes for, meat components. It is not intended that either of these food items should be used as substitutes for one of the meat or meat alternate food components. If "textured vegetable protein products" or "enriched macaroni with fortified protein" products are used in a meal, they must be served in combination with meat, poultry, or fish. Addi-

tionally, "enriched macaroni with fortified protein" may be served with cheese. "Textured vegetable protein products" cannot exceed 30 percent of the uncooked meat used to fulfill the meat or meat alternate requirement. "Enriched macaroni with fortified protein" products cannot exceed 50 percent of the two-ounce meat or meat alternate requirement. A meal containing any such combination would, therefore, exceed in nutritional value a meal which had as its protein source only one-half cup of cooked dry beans or peas as is presently credited in the regulations.

d. Textured Vegetable Protein Products. Some respondents maintained that there had been no long-term testing results available on the use of these products. In addition, some respondents maintained that potential allergic reactions from these products could have an adverse effect on children. These products have been available to the general public through commercial markets for many years and there has been a large increase in their consumption during the past year. No demonstrable evidence exists that "textured vegetable protein products," when properly processed, are linked to allergic reactions. These fortified protein products have been used in schools since February, 1971, and no adverse effects resulting from their use have been reported. On the other hand, the Department is concerned about the potentiality of adverse effects caused by any products used in its programs. It is strongly recommended, therefore, that any school which plans to use "textured vegetable protein products" in meal preparation should inform parents that such products are being used.

e. Enriched Macaroni with Fortified Protein. The argument was advanced by some durum wheat producers and manufacturers of durum mararoni products that the Department's use of the term "macaroni" in the approved product was deceptive and harmful to that segment of the macaroni industry. The Department has no responsibility for establishing the Standard of Identity for "enriched macaroni products with fortified protein". In setting forth its appendix on "enriched macaroni products with fortified protein," the Department has used a standard identical to the Standard of Identity promulgated for such products by FDA in the Federal Register of September 13, 1972 (37 FR 18525).

f. Formulated Grain-Fruit Products. Many respondents maintained that due to its sugar content this product was basically a snack or dessert-type food that was not a suitable breakfast component for service to children participating in the School Breakfast Program. It is true that several "formulated grain-fruit products" bear some resemblance to a snack food or dessert. On the other hand, doughnuts and sweet rolls are generally considered basic components of breakfast.

Furthermore, the present breakfast program meal requirements (§ 220.8) permit the service of a sweet roll as part of a school breakfast. Certainly, the "formulated grain-fruit products," with additional nutrients and served with milk, are preferable from a nutritive standpoint to the same products without nutrient fortification.

A fear was expressed by some respondents that the "formulated grain-fruit products" would subject children to an excess of chemical vitamins and minerals that could be detrimental to their health. On the contrary, the Department has established guidelines that limit the amount of those vitamins that have been proven hazardous when consumed at high levels. Due to a variety of circumstances, including a lack of food preparation and serving facilities in schools, many American school children, particularly those of needy families, are deficient in the nutrients that one would gain from eating breakfast. Alternatives that might be used to alleviate this problem are: (1) Use of vitamin pills or capsules; (2) use of foods that naturally supply needed vitamins; or (3) use of our present foods fortified with nutrients. The Department deems the first alternative to be unacceptable. The second alternative is preferable and is emphasized in all practicable instances. However, where a real need exists for nutrients normally associated with breakfast, and a regularly prepared meal consisting of conventional foods is not possible, the "formulated grain-fruit products" when served with milk are a reasonable alternative meal which contains the necessary breakfast nutrients.

Some respondents questioned the need for the "formulated grain-fruit products" even in schools with very limited food service facilities. It should be noted that there is a clear legislative mandate to make a food service progam available to all the nation's school children. Use of the "formulated grain-fruit products" in combination with milk in schools without food service facilities has proved successful in its limited test usage over the past two years, because it represented a nutritious meal that could be served conveniently and required only limited preparation facilities. The Department has concluded that the "formulated grain-fruit products" fill a definite nutritional need particularly in schools which do not have adequate facilities to provide a conventional breakfast to children.

4. Several changes in the proposed appendices authorizing "enriched macaroni with fortified protein" and "formulated frain-fruit products" were made as a result of comments received, the major changes being revision of the "enriched macaroni with fortified protein" food component authorization so that the product must conform to the FDA standard of Identity for "enriched macaroni products with fortified protein," and an increase in the Vitamin A and calorie levels of the "formulated grain-fruit products" to take into account the change in the Child Nutrition Program regulations that allow schools to use fluid milks other than fluid whole milk.

5. In view of the comments received, substantial changes are being made to the proposed specifications for "textured vegetable protein products." Consequently, the Department will again seek comments under the proposed rulemaking procedure on the use of "textured vegetable protein products," now renamed "textured meat alternates." The new proposal will be issued shortly.

Accordingly, the National School Lunch Program, School Breakfast Program, and Special Food Service Program for Children program regulations are amended, as follows:

[Amdt. 16]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. In § 210.10, the reference to "CND" in paragraph (g) is hereby deleted and reference to "FNS" is hereby substituted therefor, and the first sentence of paragraph (a)(1) is revised to read as follows:

§ 210.10 Requirements for lunches.

(a)(1) Except as otherwise provided in this section, and in any appendix to this part, a Type A lunch shall contain, as a minimum, each of the following food components in the amounts indicated: * * *

* * * * *

2. An Appendix A is added to this part, to read as follows:

APPENDIX A; ALTERNATE FOODS FOR MEALS

ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce of dry enriched macaroni products with fortified protein may be used to meet not more than one-half of the meat or meat alternate requirements specified in § 210.10 when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: "One ounce dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese."

2. Only enriched macaroni products with fortified protein that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(b) above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information is to be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All lab-

oratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following Standard of Identity, which is prescribed by the Food and Drug Administration in its regulations. The pertinent section (21 CFR 16.15) is as follows:

§ 16.15 Enriched macaroni products with fortified protein; indentity; label statement of ingredients.

(a)(1) Each of the foods for which a standard of identity is prescribed by this section is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in §§ 16.1(a) and 16.3(a),[1] and other ingredients to enable the finished food to meet the protein requirements set out in subparagraph (2)(i) of this paragraph. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) of this section. Safe and suitable ingredients, as provided for in paragraph (c) of this section, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the cited sections of the book "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition, 1970, meets the following specifications:

(i) The protein content (Nx6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the method in section 14.134. The protein quality is not less than 95 percent that of casein as determined on the cooked food by the method in sections 39.166 through 39.170 of the official methods.

(ii) The total solids content is not less than 87 percent by weight as determined by the method in section 14.125 of the official methods.

(b)(1) Each food covered by this section contains in each pound 5 milligrams of thiamin, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Iron and calcium may be added only in forms which are harmless and assimilable. The enrichment nutrients may be added in a enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. The requirements of subparagraphs (1) and (2) of this paragraph shall be deemed to have been met if reasonable overages, within the limits of good manufacturing practice, are present to assure that the prescribed levels of the vitamins and mineral(s) are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) The safe and suitable ingredients referred to in paragraph (a) of this section are ingredients that serve a useful purpose, e.g., to fortify the protein or facilitate production of the food, but they do not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act, or in case they are food additives, if they are used in conformity with regulations established pursuant to section 409 of that Act.

(d)(1) The name of any food covered by this section is "Enriched Wheat _____ Macaroni Product—with Fortified Protein," the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the word "Macaroni," "Spaghetti," or "Vermicelli," as appropriate, may be used if the units conform in shape and size to the requirements of § 16.1(b), (c), or (d).[2]

(2) When any ingredient, not designated in the part of the name prescribed in subparagraph (1) of this paragraph, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with _____," the blank being filled in with the name of each such ingredient, e.g., "Made with nonfat milk."

(3) When, in conformity with subparagraph (1) or (2) of this paragraph, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) In the case of a food made to comply with another section of this part, but which also meets the compositional requirements of this section, it may alternatively bear the name set out in that other section.

(e) The common name of each of the ingredients used shall be declared on the label as required by the applicable section of Part 1 of this chapter. Further, the declaration of ingredients as set forth in this paragraph, shall appear in letters not less than one-half the size of that required by § 1.8b of this chapter for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by FDA in 21 CFR § 80.1. Any changes that are made in the Standard of Identity for enriched macaroni products with fortified protein (21 CFR § 16.15) will be accepted by FNS.

Note: The reporting and/or record keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Assistance Program No. 10.555, National Archives Reference Services.)

[1] 21 CFR §§ 16.1(a) and 16.3(a) state in part that macaroni products are the class of food each of which is prepared by drying formed units of dough. (Footnote added by USDA.)

[2] 21 CFR §§ 16.1(b), 16.1(c), and 16.1(d) are as follows: § 16.1(b) Macaroni is the macaroni product the units of which are tube-shaped and more than 0.11 inch but not more than 0.2 inch in diameter. § 16.1(c) Spaghetti is the macaroni product the units of which are tube-shaped or cord-shaped (not tubular) and more than 0.06 inch but not more than 0.11 inch in diameter.

§ 16.1(d) Vermicelli is the macaroni product the units of which are cord-shaped (not tubular) and not more than 0.06 inch in diameter. (Footnote added by USDA.)

[Amdt. 18]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

1. In § 220.8, the reference to "CND" in paragraph (f) is hereby deleted and reference to "FNS" is hereby substituted therefor, and the first sentence of paragraph (a) is revised to read as follows:

§ 220.8 Nutritional requirements for breakfasts.

(a) Except as otherwise provided in this section, and in any appendix to this part, a breakfast shall contain, as a minimum, the following food components in the amounts indicated: * * *

* * * * * *

2. An Appendix A is added to this part, to read as follows:

APPENDIX A: ALTERNATE FOODS FOR MEALS

FORMULATED GRAIN-FRUIT PRODUCTS

1. Schools may utilize the formulated grain-fruit products defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) Formulated grain-fruit products may be used as an alternate to meet the bread/cereal and the fruit/juice requirements in the breakfast pattern specified in § 220.8.

(b) Only individually wrapped formulated grain-fruit products which bear a label conforming to the following legend shall be utilized: "This product conforms to USDA child nutrition program specifications. It meets the breakfast requirements when served with one-half pint of milk. It meets the supplemental food requirements when served with one-half cup of milk, juice, fruit, or vegetable." The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement, as described by FDA in 21 CFR § 80.1.

2. Only formulated grain-fruit products that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(b) above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, products must have the following characteristics and meet the following nutritional specifications:

(a) Types—There are two types of products: one is a grain-type product and the other a grain-fruit type product.

(b) Ingredients—A grain-type product shall have grain as its primary ingredient. A grain-fruit type product shall have fruit as its primary ingredient. Both types of products must have at least 25 percent of their weight derived from grain. All ingredients and/or components shall comply with pertinent requirements or standards of the USDA and the Food, Drug, and Cosmetic Act, as amended, and any regulations issued thereunder.

(c) Nutritional specifications—Each serving of the product shall meet the minimum compositional requirements in the following table. The requirements as specified for those nutrients not limited by maximum values will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no label claim of nutritional advantage can be made for overages for any nutrients. Analytical methods employed should be according to the standard procedures defined in the Association of Official Analytical Chemists, 1970, "Official Methods of Analysis," 11th edition, Washington, D.C. or by appropriate analytical procedures FNS considers reliable.

Nutritional levels of grain-fruit products [1]

Nutrient	Unit	Minimum	Maximum
Weight	Ounce	2	4.0
PER	Casein=2.5	2.0	
Moisture	Percent weight		40.0
Fat [2]	do		22.0
Fiber	do		0.8
Protein (Nx6.25).	Gram	5.0	
Energy	Kilocalorie	250	
Vitamin A [3]	International unit.	1,115	1,675.0
Vitamin E	do	5	
Vitamin B_{12}	Microgram	1.25	
Thiamin	Milligram	.26	
Riboflavin	do	.13	
Vitamin B_6	do	.26	
Vitamin C	do	20	
Niacin	do	2.65	
Folacin	do	.04	
Iron [4]	do	4.4	
Calcium	do	120	
Phosphorus	do	120	
Magnesium	do	30	

[1] These specifications are based on a nutrient level for acceptable products plus ½ pint of fluid milk (as defined in § 220.2 of the regulations (7 CFR Part 220)) to provide at least 25 percent of the Recommended Dietary Allowances (RDA), 1968, for 10- to 12-year-old boys and girls for specified nutrients except magnesium and kilocalories. Magnesium and kilocalories—at least 13 percent of the RDA.

[2] Although the maximum fat in these specifications is 22 percent, consideration should be given to the development of formulated items containing less fat. Most medical authorities recommend keeping the dietary intake of fats at about ⅓ of the day's calories. At least 5 percent of the total calories shall be from linoleic acid.

[3] Vitamin A levels above the maximum of 1,675 I.U. will be allowed in products containing this nutrient as a natural food, and if the vitamin has not been added to the ingredients or foods.

[4] Recommended sources of iron are ferric ammonium citrate, ferrous fumarate, ferrous sulfates ($FeSO_4$ or $FeSO_4 \cdot 7H_2O$), ferrous gluconate, reduced iron, or other sources known to have a similar relative biological value.

NOTE.—The reporting and/or record keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Assistance Program No. 10.553, National Archives Reference Services.)

[Amdt. 9]

PART 225—SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

1. In § 225.9, the reference to "CND" in paragraph (g) is hereby deleted and reference to "FNS" is hereby substituted therefor, and the first sentence of paragraph (b) is revised to read as follows:

§ 225.9 Requirements for meals.

* * * * *

(b) Except as otherwise provided in this section, and in any appendix to this part, each meal shall contain, as a minimum, the indicated food components: * * *

* * * * *

2. An Appendix A is added to this part, to read as follows:

APPENDIX A; ALTERNATE FOODS FOR MEALS

ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

1. Service institutions may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce of dry enriched macaroni products with fortified protein may be used to meet not more than one-half of the meat or meat alternate requirements specified in § 225.9 when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: "One ounce dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese."

2. Only enriched macaroni products with fortified protein that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(b) above. Manuafacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information is to be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following Standard of Identity, which is prescribed by the Food and Drug Administration in its regulations. The pertinent section (21 CFR § 16.15) is as follows:

§ 16.15 Enriched macaroni products with fortified protein; identity; label statement of ingredients.

(a)(1) Each of the foods for which a standard of identity is prescribed by this section is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in §§ 16.1(a) and 16.3(a),[1] and other ingredients to enable the finished food to meet the protein requirements set out in subparagraph (2)(i) of this paragraph. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) of this section. Safe and suitable ingredients, as provided for in paragraph (c) of this section, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the cited sections of the book "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition, 1970, meets the following specifications:

(i) The protein content (Nx6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the method in section 14.134. The protein quality is not less than 95 percent that of casein as determined on the cooked food by the method in sections 39.166 through 39.170 of the official methods.

(ii) The total solids content is not less than 87 percent by weight as determined by the method in section 14.125 of the official methods.

(b)(1) Each food covered by this section contains in each pound 5 milligrams of thiamin, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Iron and calcium may be added only in forms which are harmless and assimilable. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. The requirements of subparagraphs (1) and (2) of this pararaph shall be deemed to have been met if reasonable overages, within the limits of good manufacturing practice, are present to assure that the prescribed levels of the vitamins and mineral(s) are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) The safe and suitable ingredients referred to in paragraph (a) of this section are ingredients that serve a useful purpose, e.g., to fortify the protein or facilitate production of the food, but they do not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act, or in case they are food additives, if they are used in conformity with regulations established pursuant to section 409 of that Act.

(d)(1) The name of any food covered by this section is "Enriched Wheat_____ Macaroni Product—with Fortified Protein," the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the word "Macroni," "Spaghetti," or "Vermicelli," as appropriate, may be used if the units conform in shape and size to the requirements of § 16.1 (b), (c), or (d).[2]

[1] 21 CFR §§ 16.1(a) and 16.3(a) state in part that macaroni products are the class of food each of which is prepared by drying formed units of dough. (Footnote added by USDA.)

[2] 21 CFR 16.1(b), 16.1(c), and 16.1(d) are as follows: § 16.1(b) Macaroni is the macaroni product the units of which are tube-shaped and more than 0.11 inch but not more than 0.2 inch in diameter. § 16.1(c) Spaghetti is the macaroni product the units of which are tube-shaped or cord-shaped (not tubular) and more than 0.06 inch but not more than 0.11 inch in diameter.

§ 16.1(d) Vermicelli is the macaroni product the units of which are cord-shaped (not tubular) and not more than 0.06 inch in diameter. (Footnote added by USDA.)

(2) When any ingredient, not designated in the part of the name prescribed in subparagraph (1) of this paragraph, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with_____," the blank being filled in with the name of each such ingredient, e.g., "Made with nonfat milk."

(3) When, in conformity with subparagraph (1) or (2) of this paragraph, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) In the case of a food made to comply with another section of this part, but which also meets the compositional requirements of this section, it may alternatively bear the name set out in that other section.

(e) The common name of each of the ingredients used shall be declared on the label as required by the applicable section of Part 1 of this chapter. Further, the declaration of ingredients as set forth in this paragraph, shall appear in letters not less than one-half the size of that required by § 1.8b of this chapter for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by FDA in 21 CFR § 80.1. Any changes that are made in the Standard of Identity for enriched macaroni products with fortified protein (21 CFR § 16.15) will be accepted by FNS.

FORMULATED GRAIN-FRUIT PRODUCTS

1. Service institutions may utilize the formulated grain-fruit products defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) Formulated grain-fruit products may be used as an alternate to meet the bread/cereal and the fruit/juice requirements in breakfast pattern specified in § 225.9. It will also meet the full requirement for bread and one-half the requirement for milk, juice, fruit, or vegetable in the supplemental food pattern specified in § 225.9.

(b) Only individually wrapped formulated grain-fruit products which bear a label conforming to the following legend shall be utilized: "This product conforms to USDA child nutrition program specifications. It meets the breakfast requirements when served with one-half pint of milk. It meets the supplemental food requirements when served with one-half cup of milk, juice, fruit, or vegetable." The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement, as described by FDA in 21 CFR § 80.1.

2. Only formulated grain-fruit products that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(b) above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory). All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, products must have the following characteristics and meet the following nutritional specifications:

(a) *Types.* There are two types of products: one is a grain-type product and the other a grain-fruit type product.

(b) *Ingredients.* A grain-type product shall have grain as its primary ingredient. A grain-fruit type product shall have fruit as its primary ingredient. Both types of products must have at least 25 percent of their weight derived from grain. All ingredients and/or components shall comply with pertinent requirements or standards of the USDA and the Food, Drug, and Cosmetic Act, as amended, and any regulations issued thereunder.

(c) *Nutritional specifications.* Each serving of the product shall meet the minimum compositional requirements in the following table. The requirements as specified for those nutrients not limited by maximum values will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no label claim of nutritional advantage can be made for overages for any nutrients. Analytical methods employed should be according to the standard procedures defined in the Association of Official Analytical Chemists, 1970, "Official Methods of Analysis," 11th edition, Washintgon, D.C. or by appropriate analytical procedures FNS considers reliable.

Nutritional levels of grain-fruit producers

Nutrient	Unit	Minimum	Maximum
Weight	Ounce	2	4.0
PER	Casein=2.5	2.0	
Moisture	Percent weight		40.0
Fat [2]	do		22.0
Fiber	do		.8
Protein (Nx6.25).	Gram	5.0	
Energy	Kilocalorie	250	
Vitamin A [3]	International unit.	1,115	1,675.0
Vitamin E	do	5	
Vitamin B_{12}	Microgram	1.25	
Thiamin	Milligram	.26	
Riboflavin	do	.13	
Vitamin B_6	do	.26	
Vitamin C	do	20	
Niacin	do	2.65	
Folacin	do	.04	
Iron [4]	do	4.4	
Calcium	do	120	
Phosphorus	do	120	
Magnesium	do	30	

[1] These specifications are based on a nutrient level for acceptable products plus ½ pint of fluid milk (as defined in § 220.2 of the regulations (7 CFR Part 220)) to provide at least 25 percent of the Recommended Dietary Allowances (RDA), 1968, for 10- to 12-year-old boys and girls for specified nutrients except magnesium and kilocalories. Magnesium and kilocalories—at least 13 percent of the RDA.

[2] Although the maximum fat in these specifications is 22 percent, consideration should be given to the development of formulated items containing less fat. Most medical authorities recommend keeping the dietary intake of fats at about ⅓ of the day's calories. At least 5 percent of the total calories shall be from linoleic acid.

[3] Vitamin A levels above the maximum of 1,675 I.U. will be allowed in products containing this nutrient as a natural food, and if the vitamin has not been added to the ingredients or foods.

[4] Recommended sources of iron are ferric ammonium citrate, ferrous fumarate, ferrous sulfates ($FeSO_4$ or $FeSO_4 \cdot 7H_2O$), ferrous gluconate, reduced iron, or other sources known to have a similar relative biological value.

NOTE.—The reporting and/or record keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Catalog of Federal Domestic Assistance Program No. 10.552, National Archives Reference Services.)

Effective date. The amendments and Appendices become effective on June 30, 1974.

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-6994 Filed 3-26-74;8:45 am]

[Amdt. 19]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Realignment of Regional Boundaries

Pursuant to Amendment 14 to the regulations governing the School Breakfast and Nonfood Assistance Programs and State Administrative Expenses (38 FR 17723), Puerto Rico and the Virgin Islands are hereby transferred from the Southeast Region to the Northeast Region.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the School Breakfast and Nonfood Assistance Programs and State Administrative Expenses regulations are amended as follows:

In § 220.29, paragraphs (a) and (b) are revised to read as follows:

§ 220.9 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Georgia 30309.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.553 National Archives Reference Services)

Effective date. This amendment is effective March 11, 1974.

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-7110 Filed 3-26-74;8:45 am]

[Amdt. 10]

PART 225—SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

Realignment of Regional Boundaries

Pursuant to Amendment 6 to the regulations governing the Special Food

Service Program for Children (38 F.R. 17723), Puerto Rico and the Virgin Islands are hereby transferred from the Southeast Region to the Northeast Region.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the Special Food Service Program for Children regulations are amended as follows:

In § 225.23, paragraphs (a) and (b) are revised to read as follows:

§ 225.23 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Georgia, 30309.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10.552, National Archives Reference Services)

Effective date. This amendment is effective March 11, 1974.

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-7111 Filed 3-26-74;8:45 am]

[Amdt. 2]

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

Realignment of Regional Boundaries

The regulations governing the operation of the Special Supplemental Food Program for Women, Infants and Children (WIC Program) are amended to transfer Puerto Rico and the Virgin Islands from the Southeast Region to the Northeast Region and to show the current address of the FNS Regional Office for the Northeast Region.

This amendment is of an organizational nature and does not substantially affect the rights or obligations of any members of the public. Therefore, it is impracticable and unnecessary to follow the proposed rulemaking and public participation procedures. Accordingly, this amendment is made effective in less than 30 days following publication in the FEDERAL REGISTER.

In § 246.15, paragraph (b) (1) and (2) is revised as follows:

§ 246.15 Miscellaneous.

(b) * * *

(1) Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Northeast Region, 729 Alexander Road, Princeton, New Jersey 08540.

(2) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, N.W., Atlanta, Georgia 30309.

* * * * *

Effective date. This amendment shall become effective on March 11, 1974.

Signed at Washington, D.C., on March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-7115 Filed 3-26-74;8:45 am]

[Amdt. 25]

PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS, AND AREAS UNDER ITS JURISDICTION

Realignment of Regional Boundaries

So that FHS regional boundaries will conform to the standard Federal Regional System, Puerto Rico and the Virgin Islands are, effective March 11, 1974, being transferred from the Southeast Region to the Northeast Region. Therefore, § 250.11 of this part is amended to show the current names and addresses of offices and the alignment of States, Territories, or Possessions as set out below.

This amendment is of an organizational nature and does not substantially affect the rights or obligations of any member of the public. Accordingly, it is found that notice and public procedure concerning this amendment are impracticable and unnecessary.

§ 250.11 Where to obtain information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

Northeast Region, Food and Nutrition Service, USDA, 729 Alexander Road, Princeton, New Jersey 08540, for the following States and the District of Columbia: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia.

Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street N.W., Atlanta, Georgia 30309, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Midwest Region, Food and Nutrition Service, USDA, 536 South Clark Street, Chicago, Illinois 60605, for the following States: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin.

West-Central Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5-D-22, Dallas, Texas 75202, for the following States: Arizona (Navajo Nation only), Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

Western Region, Food and Nutrition Service, USDA, 550 Kearny Street, Room 400, San Francisco, California 94108, for the following States, Territories, or Possessions: Alaska, American Samoa, Arizona (except the Navajo Nation), California, Guam Hawaii, Idaho, Nevada, Oregon, Trust Territory, and Washington.

This amendment shall become effective on March 11, 1974.

(Catalog of Federal Domestic Assistance Program No. 10.550, National Archives Reference Services.)

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-7113 Filed 3-26-74;8:45 am]

[Amdt. 25]

PART 270—GENERAL INFORMATION AND DEFINITIONS

Food Stamp Program

The purpose of this amendment to the regulations governing the Food Stamp program is to reflect the transfer of administrative responsibility for Puerto Rico and the Virgin Islands from the Southeast Regional Office to the Northeast Regional Office.

It is impracticable and unnecessary to follow the proposed rulemaking and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the Food Stamp regulations are amended as follows:

In § 270.5(b), subparagraphs (1) and (2) are revised to read as follows:

§ 270.5 Miscellaneous provisions.

* * * * *

(b) * * *

(1) For project areas in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands and West Virginia: Northeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 729 Alexander Road, Princeton, New Jersey 08540.

(2) For project areas in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street, N.W., Room 200, Atlanta, Georgia 30309.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 10,551, National Archives Reference Services)

Effective date. This amendment shall become effective March 11, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

MARCH 22, 1974.

[FR Doc.74-7114 Filed 3-26-74;8:45 am]

[Amendment 4]

PART 295—AVAILABILITY OF INFORMATION TO THE PUBLIC

The purpose of this amendment to the regulations governing the Availability of Information to the Public is to reflect the transfer of Puerto Rico and Virgin Islands from the Southeast Region to the Northeast Region. Such realignment conforms to the standard Federal regional system.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Pursuant to Title 5, United States Code, section 552 (a) (2), 552(a) (3) and 552(b), paragraph (b), of § 295.10 is revised to read as follows for the Northeast Region and Southeast Region only:

§ 295.10 Addresses of offices.

* * * * *

(b) Requests made to Regional Offices should be addressed to the Regional Administrator of the appropriate Office, as follows:

Northeast Region, Food and Nutrition Service, USDA, 729 Alexander Road, Princeton, NJ 08540, for the following States and the District of Columbia: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Room 200, Atlanta, GA 30309, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

The remainder of the paragraph remains the same.

Effective date. This amendment shall become effective March 11, 1974.

Dated: March 20, 1974.

EDWARD J. HEKMAN,
Administrator.

[FR Doc.74-7109 Filed 3-26-74;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 920—HANDLING OF PEACHES GROWN IN UTAH

Termination of Marketing Agreement

This document terminates Marketing Agreement No. 91 and Order No. 920 (7 CFR Part 920) regulating the handling of peaches grown in Utah, hereinafter referred to as "order", effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Notice of rulemaking with respect to termination of said order was published in the January 21, 1974, FEDERAL REGISTER (39 FR 2368). The notice provided that all written data, views, or arguments in connection with the proposed termination be submitted by February 28, 1974. Views were filed by Wayman Fruit Farms, Payson, Utah, favoring the termination of Order No. 920 and none was submitted in favor of its continuance.

STATEMENT OF CONSIDERATION

The program has been inactive for a number of years. The Administrative Committee was last appointed in 1958 for the term beginning May 1, 1958. Regulations were last effective during the 1957 season. Considerable change has taken place within the Utah peach industry in the past 17 years. There has been a shift in importance among growing areas in the State, accompanied by a substantial reduction in production and in the numbers of growers and handlers. These developments have reduced the need for an order, and there is no producer interest in reactivating the order.

The Administrative Committee's assets consist of approximately $1,500 in unexpended assessment funds and interest. The excess assessment funds accrued during the years 1951–54. A total of 546 handlers have equity in the funds. The address of many handlers is not known, the amounts due handlers are small, and in many instances the amount due individual handlers is less than the cost of making a refund. Waivers were secured for individual handler equities of $10 or more from those handlers who could be contacted. Inasmuch as it would be impracticable to try to refund the money pro rata to the handlers, the entire sum should be allocated to the Utah State University of Agriculture and Applied Science, Logan, Utah 84321 for research on peaches.

FINDINGS AND ORDER

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the views expressed by Wayman Fruit Farms, and pursuant to section 8c(16) (A) of the act (7 U.S.C. 608c(16) (A)), it is hereby found that the marketing agreement and order no longer tend to effectuate the declared policy of the act and should be terminated and that postponing the effective date beyond that hereinafter specified is impracticable, unnecessary and contrary to the public interest, and good cause exists for making this termination effective on the date hereinafter set forth. It is also found that the appointment of committee members and alternates should be terminated and the above-indicated funds should be distributed to the Utah State University of Agriculture and Applied Science.

It is therefore, ordered, That (1) Marketing Agreement No. 91 and Order No. 920 (7 CFR Part 920) are hereby terminated, (2) the appointment of Administrative Committee members and alternates is hereby terminated, and said committee members and alternates are hereby discharged and relieved of all further responsibility, and (3) the Administrative Committee's assets consisting of approximately $1,500 in unexpended assessment funds and interest are hereby directed to be disbursed to the Utah State University of Agriculture and Applied Science, Logan, Utah 84321 for research on peaches.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated March 22, 1974, to become effective March 29, 1974.

JOHN DAMGARD,
Deputy Assistant Secretary.

[FR Doc.74-7107 Filed 3-26-74;8:45 am]

CHAPTER XI—AGRICULTURAL MARKETING SERVICE; DEPARTMENT OF AGRICULTURE

PART 1205—COTTON RESEARCH AND PROMOTION

Miscellaneous and Technical Amendments

On August 19, 1972, the Civil Service Commission published in the FEDERAL REGISTER (37 FR 16787) a rule changing the title of hearing examiner, as used in 5 CFR Part 930, Subpart B, to administrative law judge. By designation to the Office of Administrative Law Judges dated December 20, 1972 (37 FR 28475), as amended April 27, 1973 (38 FR 10795), the Secretary of Agriculture has provided for the issuance by the administrative law judges of initial decisions in adjudication proceedings subject to sections 556 and 557 of Title 5, United States Code, such decisions to become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with applicable rules of practice: *Provided, however,* That no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. To incorporate these and other technical changes in the Rules of Practice (7 CFR 1205.1–52) under the Cotton Research and Promotion Act (80 Stat. 280 *et seq.*), and pursuant to the authority contained in sections 12(a) and 15, 80 Stat. 284–285, 7 U.S.C. 211(a) and 2114, said Rules of Practices are hereby amended as follows:

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Orders Under the Cotton Research and Promotion Act

I. Amend § 1205.2 as follows:

Subparagraph (d) is revised to read as follows:

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

Subparagraph (k) is deleted.

II. Amend § 1205.4, § 1205.6, § 1205.7, § 1205.8, § 1205.9, § 1205.10, § 1205.16, and § 1205.19 as follows: Wherever the terms "examiner" or "presiding officer" (or the plural or possessive thereof) appear, the term "judge" (or plural or possessive thereof) is substituted.

III. Amend § 1205.16(d) as follows:

(d) *Computation of time.* Saturdays, Sundays, and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires

on a Saturday, Sunday or legal holiday, such period shall be extended to include the next following business day.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify To Be Exempted From Orders

I. Amend § 1205.51 as follows:

Subparagraph (d) is revised, subparagraph (m) is revoked and reserved, and subparagraph (n) is revised.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(m) (reserved);

(n) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or basis thereof, (2) order, (3) rulings on findings, conclusions and order submitted by the parties;

Effective date. The foregoing amendments and revisions shall become effective March 26, 1974.

(Section 12(a) and 15, 80 Stat. 284–285 (7 U.S.C. 2111(a) and 2114))

Done at Washington, D.C., this 21st day of March 1974.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.74-7028 Filed 3-26-74;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

PART 73—SCABIES IN CATTLE

Release of Areas Quarantined

This amendment releases a portion of Lamb, portions of Parmer, a portion of Hockley, a portion of Lubbock, and a portion of Hansford Counties in Texas from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded areas, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded areas. No areas in Texas remain under quarantine.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies is hereby amended as follows:

In § 73.1a, paragraph (a) relating to the State of Texas is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

Effective date. The foregoing amendment shall become effective on March 22, 1974.

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of March 1974.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-7105 Filed 3-26-74;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Nonbanking Activities

By notice of proposed rulemaking published in the FEDERAL REGISTER on December 13, 1972 (37 FR 26534), the Board of Governors proposed to amend § 225.4(a)(6) of Regulation Y to permit bank holding companies to engage in both real and personal property leasing, subject to substantially the same conditions, as an activity closely related to banking or managing or controlling banks under section 4(c)(8) of the Bank Holding Company Act. After considering the comments on such proposal, the Board published a revised proposal for comment and ordered that a public hearing be held on such revised proposal on September 12, 1973. Notice of the revised proposal and the hearing was published in the FEDERAL REGISTER on Wednesday, August 8, 1973 (38 FR 21436). A public hearing was conducted on September 12, 1973, before available members of the Board.

The Board has considered all of the material submitted on the December 13, 1972 proposal, the August 8, 1973 proposal, the record of the September 12, 1973 hearing, and all material submitted subsequent to the hearing that was received by by the Board through October 3, 1973. After considering all relevant aspects of the proposal to amend § 225.4(a)(6) to include both real and personal property leasing among the activities determined to be closely related to banking, the Board has determined to amend § 225.4(a)(6) to permit the leasing of both real and personal property. The Board has determined that separate regulations for real and personal property leasing would allow greater flexibility for innovation and the evolution of bank holding company leasing transactions. Accordingly, the Board is adopting separate regulations with substantially the same provisions which contain certain modifications from the proposal as published for comment.

The modifications with respect to personal property leasing are: the limitation on estimated residual value in computing full-payout recovery has been changed from 10 percent of the acquisition cost of the property to the lessor to 20 percent; and a new provision has been added which permits inclusion in the full-payout recovery formula, in leases of 7 years or less, such additional amount, not exceeding 60 percent of the acquisition cost of the property, as may be be provided by an unconditional guarantee by a lessee, independent third party or manufacturer which has been determined by the lessor to have the financial resources to meet such obligation.

The text of the amendment to § 225.4(a)(6) which supersedes existing § 225.4(a)(6) and 12 CFR 225.123 reads as follows:

§ 225.4 Nonbanking activities.

(a) * * *

(6) (i) Leasing personal property or acting as agent, broker or adviser in leasing such property provided:

(*a*) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(*b*) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(*c*) the lease is on a nonoperating basis;

(*d*) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transaction [4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing

[4] The Board understands that some Federal, State and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized under § 225.4(a) from entering into a lease with such governmental entities if the company reasonably anticipates that such governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further a company authorized under § 225.4(a)(6) may also engage in so-called "bridge" lease financing of personal property, but not real property, where the lease is short term pending completion of long term financing, by the same or another lender.

the property over the term of the lease,[5] from: (1) Rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and (4) in the case of a lease of not more than 7 years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(e) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(f) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

* * * * *

As an incident to this amendment the footnotes in § 225.4(a) which are denoted by asterisks and numbers are hereby redesignated as follows for clarity and ease of reference: the footnote in § 225.4(a)(1) designated as * to footnote 1; footnotes 1 and 2 in § 225.4(a)(5) to footnotes 2 and 3; footnote 3 in § 225.4(a)(10) to footnote 7; footnote 3a in § 225.4(a)(11) to footnote 8; the footnotes in § 225.4(a)(12) designated as * and ** to footnotes 9 and 10; footnote 1 in § 225.4(b)(1) to footnote 11; and footnote 2 in § 225.4(d) to footnote 12.

Effective date: April 17, 1974.

By order of the Board of Governors, March 18, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7017 Filed 3-26-74;8:45 am]

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either re-lease such property, subject to all the conditions of this subsection 6(a), or liquidate such property as soon as practicable but in no event later than two years from the date of default on a lease agreement.

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Nonbanking Activities

By notice of proposed rulemaking published in the FEDERAL REGISTER on December 13, 1972 (37 FR 26534), the Board of Governors proposed to amend § 225.4(a)(6) of Regulation Y to permit bank holding companies to engage in both real and personal property leasing, subject to substantially the same conditions, as an activity closely related to banking or managing or controlling banks under section 4(c)(8) of the Bank Holding Company Act. After considering the comments on such proposal, the Board published a revised proposal for comment and ordered that a public hearing be held on such revised proposal on September 12, 1973. Notice of the revised proposal and the hearing was published in the FEDERAL REGISTER on Wednesday, August 8, 1973 (38 FR 21436). A public hearing was conducted on September 12, 1973, before available members of the Board.

The Board has considered all of the material submitted on the December 13, 1972 proposal, the August 8, 1973 proposal, the record of the September 12, 1973 hearing, and all material submitted subsequent to the hearing that was received by the Board through October 3, 1973. After considering all relevant aspects of the proposal to amend § 225.4(a)(6) to include both real and personal property leasing among the activities determined to be closely related to banking, the Board has determined to amend § 225.4(a)(6) to permit the leasing of both real and personal property. The Board has determined that separate regulations for real and personal property leasing would allow greater flexibility for innovation and the evolution of bank holding company leasing transactions. Accordingly, the Board is adopting separate regulations with substantially the same provisions which contain certain modifications from the proposal as published for comment.

The modification with respect to real property leasing is that the limitation on the estimated residual value in computing full-payout recovery has been changed from 10 percent of the acquisition cost of the property to 20 percent.

The text of the amendment to § 225.4(a)(6) which supersedes existing § 225.4(a)(6) and 12 CFR 225.123 reads as follows:

§ 225.4 Nonbanking activities.

(a) * * *

(6) * * *

(ii) Leasing real property or acting as agent, broker or adviser in leasing such property provided:

(a) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(b) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(c) the lease is on a nonoperating basis;

(d) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions [4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from: (1) Rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); and (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor.

(e) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(f) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

* * * * *

Effective date: April 17, 1974.

[4] The Board understands that some Federal, State and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized under § 225.4(a) from entering into a lease with such governmental entities if the company reasonably anticipates that such governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized under § 225.4(a)(6) may also engage in so-called "bridge" lease financing of personal property, but not real property, where the lease is short term pending completion of long term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either re-lease such property, subject to all the conditions of this subsection 6(b), or liquidate such property as soon as practicable but in no event later than two years from the date of default on a lease agreement.

By order of the Board of Governors, March 18, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7016 Filed 3-26-74;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 12, Amdt. 10]

PART 121—SMALL BUSINESS SIZE STANDARDS REGULATION

Energy Crisis Provisos for Use in Determining Size of Loan Applicant Adversely Affected by the Shortage of Energy or Materials

This amendment provides a special procedure for determining the "annual receipts" or "number of employees" of a concern for the purpose of qualifying for financial assistance under Small Business Administration programs in cases where such concern's business has suddenly and significantly decreased due to the shortage of energy or materials.

It has come to our attention that there are concerns that have suffered severe financial reverses due to loss of business caused by the energy and material shortage crises, but which are ineligible to receive financial assistance because their total annual receipts *during their most recently completed fiscal year*, or average number of employees *during the preceding four calendar quarters*, exceeded the applicable size standard. For example, a retail dealership in recreational vehicles or boats can qualify as small for the purpose of an SBA loan if its gross annual receipts *for its most recently completed fiscal year* do not exceed $1 million. If, during its most recently preceding fiscal year, a dealership had annual receipts exceeding $1 million, it would not qualify as small even though, as a result of the gasoline shortage, its average monthly receipts clearly indicate that its current year's receipts will be well within the $1 million standard. Similar situations occur where a concern's size is determined by its average employment during the preceding four calendar quarters, but where it has had to lay off a substantial number of employees due to the energy crisis or because of the shortage of materials.

In view of the above, it is deemed appropriate to amend the definition of the term "annual receipts" in § 121.3-2(b) of the size standards regulation to provide that if, for the purpose of receiving financial assistance, it is determined that (1) an applicant has completed at least 3 months of its current fiscal year, (2) its gross receipts during the completed months of its *current* fiscal year are at least 25 percent lower than its receipts during the corresponding months of its most recently completed fiscal year, and (3) the reduction in receipts was primarily due to the shortage of energy or materials, its "annual receipts" for size determination purposes would be determined by reducing the concern's annual receipts for its most recently completed fiscal year by the determined percentile.

EXAMPLE: Applicant's fiscal year ends December 31, 1973. Its annual receipts for such fiscal year were $1,200,000, which exceeds the applicable size standard. However, its total receipts for January, February, and March 1974 were only $150,000 as compared with $300,000 for January, February, and March 1973, a 50 percent reduction in receipts. This change would trigger the alternative method of computing the concern's "annual receipts" with the following result: The concern's annual receipts for its most recently completed fiscal year ($1.2 million) would be reduced by 50 percent. Thus, its "annual receipts" for the purpose of qualifying for financial assistance would be $600,000.

It is also deemed appropriate to amend the definition of the term "number of employees" in § 121.3-2(t) to provide that, if it is determined that a concern's employment in its most recent calendar quarter is at least 25 percent lower than its employment for the corresponding quarter in the preceding calendar year and such reduction in employment was primarily due to the shortage of energy or materials, its "number of employees" for size determination purposes would be determined by reducing its average employment for the preceding four calendar quarters by the determined percentile.

EXAMPLE: Applicant's employment for several months has averaged 600 persons, which exceeds the applicable 500 employment standard. However, its employment for the most recent quarter is only 300 persons, a reduction of 50 percent from its employment during the same quarter of the preceding year. This being more than 25 percent, the alternative method of computation is triggered with the following result: The concern's average employment for its preceding four quarters would be reduced by 50 percent. Thus, its "number of employees" for the purpose of qualifying for financial assistance would be 300 persons.

Accordingly, Part 121 of Chapter I of Title 13 of the Code of Federal Regulations is hereby amended by revising the first sentences of § 121.3-2 (b) and (t) to read as follows:

§ 121.3-2 Definition of terms used in this part.

* * * * *

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes *provided however*, if, for the purpose of receiving financial assistance under a Small Business Administration program, it is determined that (1) the applicant has completed at least 3 months of its current fiscal year, (2) its gross receipts for the completed months of its current fiscal year are at least 25 percent lower than its receipts during the corresponding months of its most recently completed fiscal year, and (3) the reduction in receipts was primarily due to the shortage of energy or materials, its "annual receipts" for size determination purposes shall be computed by reducing its annual receipts for its most recently completed fiscal year by the determined percentile. * * *

* * * * *

(t) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters: *Provided however*, If, for the purpose of determining a concern's eligibility for financial assistance under a Small Business Administration program, it is determined that a concern's employment in its most recently completed calendar quarter is at least 25 percent lower than its employment in the corresponding quarter in the preceding calendar year and that such reduction in employment was primarily due to the shortage of energy or materials, its "number of employees" for size determination purposes shall be determined by reducing its average employment for the preceding four calendar quarters by the determined percentile. * * *

* * * * *

Effective date. This amendment shall become effective on March 27, 1974. In view of the need for immediate assistance to many concerns adversely affected by the shortage of energy or materials, we have determined that notice and public procedure on this amendment are impracticable.

(All Catalog of Federal Domestic Assistance Program Numbers except 59.009, Procurement Assistance to Small Business.)

Dated: March 19, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc. 74-7077 Filed 3-26-74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-WA-9]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Terminal Control Area at Cleveland, Ohio

On November 12, 1973, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (38 FR 31182) stating that the Federal Aviation

Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a Group II Terminal Control Area (TCA) for Cleveland, Ohio.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. Seven comments were received.

The Air Transport Association endorsed the TCA as proposed, while six other commenters opposed it. The opposition was based primarily on the belief that the establishment of a TCA at Cleveland was not justified, especially in view of the energy crisis. Their contention is that air carrier schedule reductions will reduce the number of enplaned passengers and that additional fuel will be required for nontransponder-equipped aircraft to circumnavigate the TCA airspace.

The issue concerning the establishment of a Group II TCA at Cleveland was contained in Notice 69–41, published in the FEDERAL REGISTER on September 30, 1969 (34 FR 15252), and Notice 69–41B, published in the FEDERAL REGISTER on March 13, 1970 (35 FR 4519), which delineated the locations of the 22 hub areas where Group I and Group II TCAs were proposed.

The FAA has maintained a monitor of the activities at the proposed TCA areas and has determined that Cleveland still warrants the establishment of a Group II TCA. It may be noted, as an example, that as a result of monitoring the activity at the 22 hub locations, Cincinnati has been deleted as a proposed Group II TCA location.

A review of the enplaned passenger activity generated by communities in the Cleveland area for calendar years 1972, 1973 and the first part of January 1974, indicates that the number of enplaned passengers is increasing rather than decreasing even though some scheduled flights have been cancelled. This is attributed to the remaining flights operating at or near capacity and larger aircraft being utilized. Although, in view of the fuel shortage, it is desirable to conserve fuel, it is believed that this TCA represents the minimum amount of airspace necessary to accomplish the safety objectives for which this is action is taken.

Concern was expressed that transponder equipment costs would cause undue financial hardship for fixed base operators and owners of aircraft based at and desiring to use Cleveland-Hopkins Airport, including the surrounding airspace.

The requirements for the improved transponder equipment have been under development for many years. Regulatory proposals issued in 1965, 1969, and 1972 discussed the requirement for this equipment within the National Airspace System. Numerous members of the aviation community responded to these various proposals with constructive suggestions concerning the problem and many of their suggestions were reflected in the final regulation.

There are many reasons for requiring altitude reporting transponders. This equipment eliminates much of the conversation that would otherwise be required between pilot and controller on busy voice communication frequencies. It also furnishes vital altitude information to controllers in situations where the pilot is not in radio communication with the ground system. In effect, with the use of automatic altitude reporting transponder equipment the present two-dimensional radar becomes three-dimensional. The result of this is a more efficient and safer air traffic control system.

Comments about the TCA configuration included statements that a ceiling of 8,000 feet is unnecessary; Area B will interfere with aircraft using the south shore of Lake Erie as a VFR fly-away in that it will require aircraft to fly through Burke Lakefront traffic patterns or force them out over the lake a sufficient distance that they could not glide to shore in case of an emergency; raise the floor to but excluding 2,500 feet MSL in the southeast quadrant from Cleveland-Hopkins Airport because of the tall TV towers located in this area; and also, the northwest/southeast runway at Cleveland-Hopkins is closed.

TCA ceilings are normally designated at or near 7000 feet above the primary airport elevation. This altitude was selected as a result of the FAA 1968 Near Mid-Air Collision Study which found that most of the terminal area incidents occurred within this altitude range. The establishment of the Cleveland TCA will still allow aircraft to fly along the lakeshore at an altitude of approximately 1300 feet above the water which meets the requirements of Federal Regulations regarding VFR minimum altitudes. This altitude should also allow the aircraft to use the beaches for possible emergency landing areas. The Burke Lakefront Airport traffic area extends up to but not including 3584 feet MSL, however, this does not prohibit aircraft flying through this area at a lesser altitude provided they contact the Control Tower in accordance with existing regulations. This communications requirement is intended to increase safety while operating in an airport traffic area.

The TCA floors proposed in the NPRM are based on the airspace required to contain climb and descent profiles. The comment that the airspace in the southeast quadrant of Area "B" below 3,000 feet MSL is not needed since no aircraft are taking off in that direction does not allow for the maneuvering of aircraft close to the airport. Area "B" is designed to contain close-in vectoring of aircraft arriving and departing Cleveland-Hopkins Airport. In addition to sequencing arrivals in this area, aircraft taking off in a westerly direction use it for transitioning via V–297, V–30 and V–42 over Akron/Canton and via V–6 over Youngstown. Aircraft taking off in an easterly direction turn right and climb on course toward Mansfield. For these reasons Area "B" is adopted as proposed in the Notice.

Two commenters suggested a corridor plan aligned to each runway. A simulated test of the climb/descent corridor concept was conducted at Boston, Massachusetts, in June and July of 1971. Representatives of the major user organizations observed the simulation. One TCA and three corridor configurations were tested. It was concluded that any of the plans would provide the desired degree of safety; however, only the TCA would provide for efficient use of the airspace and air traffic control flexibility required in major terminal areas.

In consideration of the foregoing and for reasons stated in Docket No. 9880 (35 FR 7782), Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, May 23, 1974, by adding the following to § 71.401(b) (39 FR 636) Group II Terminal Control Areas.

§ 71–401 Designations.

(b) * * *

CLEVELAND, OHIO, TERMINAL CONTROL AREA

PRIMARY AIRPORT

Cleveland-Hopkins International Airport (Lat. 41°24'37" N., Long. 81°50'56" W.)

Cleveland-Hopkins distance measuring equipment (DME) antenna (Lat. 41°24'15" N., Long. 81°51'44" W.)

BOUNDARIES

Area A

That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of the Cleveland-Hopkins International Airport DME antenna, excluding that airspace within a 1-mile radius of the Strongsville Airpark (Lat. 41°19'25" N., Long. 81°52'00" W.) and Gilbert Airport (Lat. 41°22'00" N., Long. 81°-58'00" W.)

Area B

That airspace extending upward from 1900 feet MSL to and including 8,000 feet MSL within an 8.5-mile radius of the Cleveland-Hopkins International Airport DME antenna excluding Area A previously described, and that airspace within a 2-mile radius of Burke Lakefront Airport (Lat. 41°30'45" N., Long. 81°41'15" W.)

Area C

That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius of the Cleveland-Hopkins International Airport DME antenna excluding Areas A and B previously described.

Area D

That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius of the Cleveland-Hopkins International Airport DME antenna, excluding Areas A, B, and C previously described.

* * * * *

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on March 20, 1974.

RAYMOND M. MCINNIS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74–7054 Filed 3–26–74;8:45 am]

[Airspace Docket No. 73-NW-9]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Extension of VOR Federal Airway

On January 11, 1974, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (39 FR 1640) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would extend VOR Federal Airway No. 122 from Lakeview, Oreg., direct to Rome, Oreg.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. No comments were received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 23, 1974, as hereinafter set forth.

§ 71.123 (39 FR 307) is amended as follows:

In V-122—"Lakeview, Oreg." is deleted and "Lakeview, Oreg.; to Rome, Oreg." is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).

Issued in Washington, D.C., on March 21, 1974.

RAYMOND M. MCINNIS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-7056 Filed 3-26-74;8:45 am]

[Airspace Docket No. 73-SW-83]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area and Federal Airways

On January 31, 1974, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (39 FR 3967) stating that the Federal Aviation Administration (FAA) was considering amendments to Parts 71 and 73 of the Federal Aviation regulations that would alter the description of Restricted Area R-3801D, Camp Claiborne, La., to make its horizontal boundaries the same as those of Restricted Areas R-3801B and R-3801C. The description of V-114 would also be altered to exclude R-3801B and R-3801C.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation regulations are amended, effective 0901 G.m.t., May 23, 1974, as hereinafter set forth.

In § 71.123 (39 FR 307) the description of V-114 is amended by deleting "within R-3801D." at the end of its description and substituting "within R-3801B, R-3801C and R-3801D." therefor.

2. In § 73.38 (39 FR 668) the description of Restricted Area R-3801D is amended to read as follows:

R-3801D CAMP CLAIBORNE, LA.

Boundaries. Beginning at latitude 31°-11'45" N., longitude 92°30'15" W.; to latitude 31°05'15" N., longitude 92°34'50" W.; to latitude 31°13'55" N., longitude 92°49'45" W.; to latitude 31°18'00" N., longitude 92°46'30" W.; to latitude 31°15'15" N., longitude 92°41'45" W.; to latitude 31°17'10" N., longitude 92°40'10" W.; to point of beginning.

Designated altitudes. 14,000 feet MSL to and including FL 200.

Time of designation. Continuous. R-3801D shall not be activated unless the Houston ARTC Center radar (Alexandria System) is operational.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. Commander, England AFB, La.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 21, 1974.

RAYMOND M. MCINNIS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-7055 Filed 3-26-74;8:45 am]

[Airspace Docket No 73-NE-32]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Areas; Correction

On March 6, 1974, FR Doc. 74-5099 was published in the FEDERAL REGISTER (39 FR 8609) amending Part 73 of the Federal Aviation Regulations to change the using agency for Restricted Areas, R-4105 No Man's Land Island, Mass., and R-4106 North Eastham, Mass., effective 0901 GMT, May 23, 1974.

The using agency for R-4105 was then incorrectly identified as Commander, Partol Wing FIVE, NAS Brunswick, Maine. The correct using agency for R-4105 is the Commanding Officer, Naval Air Station, South Weymouth, Mass.

Since designation of a different using agency is a minor amendment upon which the public is not particularly interested, notice and public procedure thereon are unnecessary. However, as it is essential that the correct using agency of the restricted area be identified, good cause exists for making this amendment effective immediately.

In consideration of the foregoing, F.R. Doc. 74-5099 (39 FR 8609) is amended, effective upon publication of this amendment in the FEDERAL REGISTER, as hereinafter set forth.

In § 73.41 (39 FR 671), subparagraph a., "Commander, Patrol Wing FIVE NAS Brunswick, Maine" is deleted and "Commanding Officer, NAS South Weymouth, Mass." is substituted therefor.

(Sec. 307(a), (Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C. on March 21, 1974.

RAYMOND M. MCINNIS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-7057 Filed 3-26-74;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 5-74-02 R]

PART 127—SECURITY ZONES

Hampton Roads—James River—Newport News, Va.

This amendment to the Coast Guard's Security Zone Regulations establishes the waters of the James River in the area of the Newport News Shipbuilding and Drydock Company, Newport News, Virginia as a Security Zone. This security zone is established to prevent interference with the launching of the submarine LOS ANGELES at the Newport News Shipbuilding and Drydock Company, Newport News, Virginia.

This amendment is issued without publication of a notice of proposed rule making; and this amendment is effective in less than 30 days from the date of publication, because this security zone involves a military function of the United States.

In consideration of the foregoing, Part 127 and Title 33 of the Code of Federal Regulations is amended by adding § 127.501 to read as follows:

§ 127-501 Hampton Roads—James River—Newport News, Virginia.

The waters within the following boundary is a security zone: A line beginning at position 36°58'48" N., 76°26'26" W. to James River Buoy No. 1 at 36°57'53" N., 76°26'42" W. thence to a point at position 36°59'07" N., 76°28'08" W. thence to a point on shore at position 36°59'35" N., 76°26'55" W. thence to the beginning point.

(46 Stat. 220, as amended (§ 1, 63 Stat. 503,) § 6(b), 80 Stat. 937; 50 U.S.C. § 191 (14 U.S.C. § 91,) 49 U.S.C. § 1655(b); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249; 3 CFR, 1949-1953 Comp. 356, 778, 873, 3 CFR 1964-1965 Comp. 349, 33 CFR Part 6, 49 CFR 1.46(b)).

Effective date: This amendment is effective from 1015Q to 1230Q April 6, 1974.

G. N. WOOD,
Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads Area.

[FR Doc.74-6992 Filed 3-26-74;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-230]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Illinois	Madison	Alton, city of				Mar. 25, 1974, Emergency.
Do	McHenry	Lakewood, village of.				Do.
Do	Winnebago	South Beloit, city of.				Do.
Do	Adams	Quincy, city of				Do.
Missouri	Lewis	Canton, city of				Do.
Do	Lincoln	Elsberry, city of				Do.
Do	Platte	Unincorporated areas.				Do.
Oregon	Clatsop	Seaside, city of				Do.
Pennsylvania	Berks	Bern, township of				Do.
Virginia	Gloucester	Unincorporated areas.				Do.
Do	Surry	do				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Pub. L. 91–152, Dec. 24, 1969) (42 U.S.C. 4001–4127); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: March 18, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74-6952 Filed 3-26-74;8:45 am]

[Docket No. FI-229]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding. Since this publication is merely for the purpose of informing the public of the location of areas of special flood hazard and has no binding effect on the sale of flood insurance or the commencement of construction, notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Inasmuch as this publication is not a substantive rule, the identification of special hazard areas shall be effective on the date shown. Accordingly, § 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
Alabama	Colbert	Sheffield, city of	H 01 033 2780 01 through H 01 033 2780 06	Alabama Development Office, Office of State Planning, State Office Bldg., 501 Dexter Ave., Montgomery, Ala. 36104. Alabama Insurance Department, Room 453, Administrative Bldg., Montgomery, Ala. 36104.	Office of the City Clerk, City of Sheffield, Drawer Q, Sheffield, Ala. 35660.	March 22, 1974.
Do	Lawrence	Moulton, city of	H 01 079 2150 01 through H 01 079 2150 06	do	Mayor, City Hall, Moulton, Ala. 35650.	Do.
Do	Marshall	Guntersville, city of.	H 01 095 1500 01 through H 01 095 1500 18	do	Mayor, City Hall, Guntersville, Ala. 35976.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Arkansas	Chicott	Dermott, city of	H 05 017 1070 01	Division of Soil and Water Resources, State Department of Commerce, 1920 West Capitol Ave., Little Rock, Ark. 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, Ark. 72204.	Mayor, City Hall, Dermott, Ark. 71638.	Do.
Do	Columbia	Taylor, city of	H 05 027 3800 01 through H 05 027 3800 02	do	Mayor, Taylor, Ark. 71861	Do.
Do	Cross	Wynne, city of	H 05 037 4260 01	do	City Planning Commission, P.O. Box 9, Wynne, Ark. 72396.	Do.
Do	Fulton	Salem, city of	H 05 049 3500 01	do	Mayor, City Hall, Salem, Ark. 72576	Do.
Do	Independence	Oil Trough, city of.	H 05 063 2925 01	do	Mayor, City Hall, Oil Trough, Ark. 72564.	Do.
Do	Izard	Calico Rock, city of.	H 05 065 0610 01 through H 05 065 0616 02	do	Mayor, City Hall, Calico Rock, Ark. 72519.	Do.
Do	St. Francis	Madison, city of	H 05 123 2460 01	do	Mayor, City Hall, Madison, Ark. 72359	Do.
California	Napa	Napa, city of	H 06 055 2330 01 through H 06 055 2330 07	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 91112, and, 1407 Market St., San Francisco, Calif. 74103.	Mayor, City Hall, 955 School St., Napa, Calif. 94558.	Do.
Do	Orange	Villa Park, city of	H 06 059 4045 01 through H 06 059 4045 04	do	Mayor, City Hall, 18401 Villa Park Rd., Villa Park, Calif. 92667.	Do.
Do	San Diego	National City	H 06 073 2340 01 through H 06 073 2340 04	do	Engineering Department, Civic Center, 1243 National Ave., National City, Calif. 92050.	Do.
Do	Santa Clara	Milpitas, city of	H 06 085 2182 01 through H 06 085 2182 04	do	Mayor, City Hall, 455 East Calaveras Blvd., Milpitas, Calif. 95035.	Do.
Do	do	Saratoga, city of	H 06 085 3520 01 through H 06 085 3520 03	do	Mayor, City Hall, 13777 Fruitvale Ave., Saratoga, Calif. 95070.	Do.
Do	Santa Cruz	Watsonville, city of.	H 06 087 4100 01 through H 06 087 4100 05	do	Mayor, City Hall, 250 Main St., Watsonville, Calif. 95076.	Do.
Do	Siskiyou	Yreka, city of	H 06 093 4266 01 through H 06 093 4266 04	do	City Manager, City Hall, Yreka, Calif. 96097.	Do.
Do	Solano	Suisun City, city of.	H 06 095 3780 01 through H 06 095 3780 03	do	Mayor, City Hall, 710 Suisun St., Suisun, Calif. 94585.	Do.
Colorado	Gunnison	Gunnison, city of	H 08 051 1100 01 through H 08 051 1100 02	Colorado Water Conservation Board, Room 102, 1845 Sherman St., Denver, Colo. 80203. Colorado Division of Insurance, 106 State Office Bldg., Denver, Colo. 80203.	Mayor, City Bldg., Gunnison, Colo. 81230.	Do.
Do	La Plata	Ignacio, town of	H 08 067 1250 01	do	Mayor, Ignacio, Colo. 81137	Do.
Do	Larimer	Wellington, town of.	H 08 069 2530 01	do	Mayor, City Hall, Wellington, Colo. 80549.	Do.
Do	Prowers	Lamar, city of	H 08 099 1440 01 through H 08 099 1440 02	do	Mayor, Lamar, Colo. 81052.	Do.
Connecticut	Middlesex	Cromwell, town of.	H 09 007 0160 01 through H 09 007 0160 06	Department of Environmental Protection, Division of Water and Related Resources, Room 207, State Office Bldg., Hartford, Conn. 06115. Connecticut Insurance Department, State Capitol Bldg., 165 Capitol Ave., Hartford, Conn. 06115.	Cromwell Town Hall, 5 West St., Cromwell, Conn. 06416.	Do.
Do	New Haven	Waterbury, city of.	H 09 009 0810 01 through H 09 009 0810 08	do	City Hall, Waterbury, Conn. 06702.	Do.
Georgia	Catoosa	Ringgold, city of.	H 13 047 4680 01 through H 13 047 4680 03	Department of Natural Resources, Office of Planning and Research, 270 Washington St. SW., Room 707, Atlanta, Ga. 30334. Georgia Insurance Department, State Capitol, Atlanta, Ga. 30334.	City Manager, city of Ringgold, City Hall, Ringgold, Ga. 30736.	Do.
Do	Fannin	McCaysville, city of.	H 13 111 3350 01 through H 13 111 3350 04	do	Mayor, City Hall, McCaysville, Ga. 30555.	Do.
Do	Walker	Chickamauga, city of.	H 13 295 1110 01 through H 13 295 1110 03	do	City of Chickamauga, City Hall, P.O. Box 68, Chickamauga, Ga. 30707.	Do.
Do	do	Rossville, city of	H 13 295 4780 01 through H 13 295 4780 03	do	City Hall, City of Rossville, Rossville, Ga. 30746.	Do.
Idaho	Kootenai	Harrison, city of	H 16 055 0670 01	Department of Water Administration, State House, Annex 2, Boise, Idaho 83707. Idaho Department of Insurance, Room 206, Statehouse, Boise, Idaho 83707.	Mayor, Harrison, Idaho 83833	Do.
Illinois	Carroll	Mt. Carroll, city of.	H 17 015 5840 01	Governor's Task Force on Flood Control, Natural Resources Services Center, Thornhill Bldg., P.O. Box 475, Lisle, Ill. 60532. Illinois Insurance Department, 509 State Office Bldg., Springfield, Ill. 62702.	Mayor, Mt. Carroll, Ill. 61053	Do.
Do	Champaign	Fisher, village of	H 17 019 3030 01	do	Mayor, City Hall, Fisher, Ill. 61843	Do.
Do	Clay	Clay City, village of.	H 17 025 1780 01	do	Mayor, City Hall, Clay City, Ill. 62824.	Do.
Do	Clinton	Albers, village of	H 17 027 0045 01	do	Mayor, Village Hall, Albers, Ill. 62215	Do.
Do	Cook	Alsip, village of	H 17 031 0140 01 through H 17 031 0140 03	do	Mayor, Village Hall, 4500 West 123d St., Alsip, Ill. 60658.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
Do	Cook and Lake	Barrington, village of.	H 17 031 0510 01 through H 17 031 0510 02	do	President, 206 South Hough, Barrington, Ill. 60010.	Do.
Do	Cook	Blue Island, city of.	H 17 031 0850 01	do	Mayor, City Hall, Blue Island, Ill. 60406.	Do.
Do	do	Bridgeview, village of.	H 17 031 0980 01 through H 17 031 0980 02	do	President, Village Hall, 7401 West 75th St., Oak Lawn, Ill. 60455.	Do.
Do	do	Broadview, village of.	H 17 031 1030 01	do	President, 1600 Roosevelt Rd., Broadview, Ill. 60153.	Do.
Do	do	Burnham, village of.	H 17 031 1200 01	do	President, Village Hall, 13925 Entre Ave., Burnham, Ill. 60633.	Do.
Do	do	Chicago Ridge, village of.	H 17 031 1690 01 through H 17 031 1690 02	do	President Village Hall, 10655 South Oak, Chicago Ridge, Ill. 60415.	Do.
Do	do	Crestwood, village of.	H 17 031 2050 01 through H 17 031 2050 02	do	Village of Crestwood, Village Hall, 13840 South Cicero, Crestwood, Ill. 60445.	Do.
Do	do	Dolton, village of.	H 17 031 2390 01 through H 17 031 2390 02	do	President, Village Hall, 14014 Park Ave., Dolton, Ill. 60419.	Do.
Do	do	East Hazel Crest, village of.	H 17 031 2570 01	do	President, East Hazel Crest Village Hall, Hazel Crest, Ill. 60429.	Do.
Do	do	Evergreen Park, village of.	H 17 031 2890 01 through H 17 031 2890 02	do	Evergreen Park Village Hall, 9418 South Kedize Ave., Evergreen Park, Ill. 60642.	Do.
Do	do	Hickory Hills, city of.	H 17 031 3895 01 through H 17 031 3895 02	do	Office of the Bldg. Commissioner, 8552 West 95th St., Hickory Hills, Ill. 60451.	Do.
Do	do	Inverness, village of.	H 17 031 4180 01 through H 17 031 4180 03	do	President, 1918 Pheasant Trail, Inverness, Ill. 60067.	Do.
Do	do	Justice, village of.	H 17 031 4350 01	do	President, Village Hall of Justice, Oak Lawn, Ill. 60458.	Do.
Do	do	Midlothian, village of.	H 17 031 5550 01	do	Municipal Bldg., 14801 Crawford Ave., Midlothian, Ill. 60445.	Do.
Do	do	Orland Park, village of.	H 17 031 6610 01 through H 17 031 6610 03	do	President, Village Hall, 14415 Beacon Ave., Orland Park, Ill. 60462.	Do.
Do	do	Palos Heights, city of.	H 17 031 6687 01 through H 17 031 6687 02	do	Bldg. Commissioner, City of Palos Heights, 12227 South Harlem Ave., Palos Heights, Ill. 60463.	Do.
Do	do	Palos Hills, city of.	H 17 031 6688 01	do	Mayor, City Hall, 8555 West 103d St., Palos Hills, Ill. 60465.	Do.
Do	do	Posen, village of.	H 17 031 7100 01 through H 17 031 7100 02	do	Village of Posen, Village Hall, 14401 Campbell Ave., Posen, Ill. 60469.	Do.
Do	do	South Barrington, village of.	H 17 031 8075 01 through H 17 031 8075 03	do	President, Buckthorn Rd., Route No. 2, Barrington, Ill. 60010.	Do.
Do	do	Stone Park, village of.	H 17 031 8340 01	do	President, 1629 North Mannheim Rd., Stone Park, Ill. 60165.	Do.
Do	Effingham	Altamont, city of.	H 17 049 0150 01	do	Mayor, Community Bldg., Altamont, Ill. 62411.	Do.
Do	do	Effingham, city of.	H 17 049 2650 01 through H 17 049 2650 03	do	Mayor, City Hall, Effingham, Ill. 62401.	Do.
Do	Fayette	Vandalia, city of.	H 17 051 8800 01 through H 17 051 8800 02	do	Mayor, City Hall, Vandalia, Ill. 62471.	Do.
Do	Franklin	Buckner, village of.	H 17 055 1140 01	do	Mayor, City Hall, Buckner, Ill. 62819.	Do.
Do	Fulton	Ellisville, village of.	H 17 057 2744 01	do	County Board Chairman, village of Ellisville, Lewistown, Ill. 61542.	Do.
Do	Gallatin	Equality, village of.	H 17 059 2840 01	do	President of Village Bldge., Municipal Bldg., Equality, Ill. 62934.	Do.
Do	Hamilton	McLeansboro, city of.	H 17 065 5080 01	do	Mayor, City Hall, McLeansboro, Ill. 62859.	Do.
Do	Hancock	Dallas City, city of.	H 17 067 2170 01	do	Mayor, Dallas City, Ill. 62330	Do.
Do	Jersey	Grafton, city of	H 17 083 3510 01 through H 17 083 3510 02	do	City Hall, Grafton, Ill. 62037	Do.
Do	Kane	Carpentersville, village of.	H 17 089 1390 01 through H 17 089 1390 02	do	President, 1200 Meadowdale Dr., Carpentersville, Ill. 60110.	Do.
Do	Lake	North Barrington, village of.	H 17 097 6279 01	do	President, 579 Crooked Lane, Barrington, Ill. 60010.	Do.
Do	La Salle	La Salle, city of	H 17 099 4690 01 through H 17 099 4690 02	do	Mayor, City Hall, La Salle, Ill. 61301	Do.
Do	Lawrence	Russellville, village of.	H 17 101 7605 01	do	Mayor, City Hall, Russellville, Ill. 60075.	Do.
Do	McHenry	Crystal Lake, city of.	H 17 111 2100 01 through H 17 111 2100 03	do	Mayor, Crystal Lake, Ill. 60014	Do.
Do	do	Woodstock, city of.	H 17 111 9560 01 through H 17 111 9560 04	do	Mayor, Woodstock, Ill. 60098	Do.
Do	Madison	Livingston, village of.	H 17 119 4890 01	do	Mayor, Livingston, Ill. 62058	Do.
Do	Monroe	Waterloo, city of.	H 17 133 9060 01 through H 17 133 9060 02	do	City Manager, 104 West 4th St., Waterloo, Ill. 62298.	Do.
Do	Perry	Pinckneyville, city of.	H 17 145 6960 01 through H 17 145 6960 02	do	Mayor, City Hall, Pinckneyville, Ill. 62274.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Rock Island	Port Byron, village of.	H 17 161 7090 01 through H 17 161 7090 02	do	Mayor, City Hall, Port Byron, Ill. 61265.	Do.
Do	do	Rapids City, village of.	H 17 161 7230 01	do	Mayor, Village Hall, Rapids City, Ill. 61278.	Do.
Do	St. Clair	Freeburg, village of.	H 17 163 3200 01	do	Mayor, City Hall, Freeburg, Ill. 62243	Do.
Do	do	New Athens, village of.	H 17 163 6050 01	do	Board of Appeals, 101 North Johnson, New Athens, Ill. 62264.	Do.
Do	Saline	Harrisburg, city of.	H 17 165 3750 01	do	Mayor, City Hall, Harrisburg, Ill. 62946.	Do.
Do	do	Muddy, village of.	H 17 165 5926 01	do	President, Village Board, Village Hall, Muddy, Ill. 62965.	Do.
Do	Sangamon	Pleasant Plains, village of.	H 17 167 7030 01	do	Mayor, City Hall, Pleasant Plains, Ill. 62677.	Do.
Do	do	Thayer, village of.	H 17 167 8540 01	do	Mayor, City Hall, Thayer, Ill. 62689	Do.
Do	Tazewell	Armington, village of.	H 17 179 0290 01	do	Village Board, Armington, Ill. 61621	Do.
Do	Vermilion	Potomac, village of.	H 17 183 7110 01	do	Mayor, City Hall, Potomac, Ill. 61865	Do.
Do	Whiteside	Rock Falls, city of.	H 17 195 7450 01 through H 17 195 7450 03	do	City Council, Municipal Center, Rock Falls, Ill. 61071.	Do.
Do	Will	Rockdale, village of.	H 17 197 7430 01	do	President, Village Hall, Rockdale, Ill. 60436.	Do.
Do	Winnebago	Roscoe, village of	H 17 201 7495 01	do	Village President, City Hall, Roscoe, Ill. 61073.	Do.
Indiana	Marion	Southport, city of	H 18 097 4600 01	Division of Water, Department of Natural Resources, 608 State Office Bldg., Indianapolis, Ind. 46204. Indiana Insurance Department, 509 State Office Bldg., Indianapolis, Ind. 46204.	Mayor, city of Southport, 2501 City-County Bldg., Indianapolis, Ind. 46204.	Do.
Iowa	Allamakee	Waukon, city of	H 19 005 8830 01	Iowa Natural Resources Council, James W. Grimes Bldg., Des Moines, Iowa 50319. Iowa Insurance Department, Lucas State Office Bldg., Des Moines, Iowa 52172.	Mayor's Office, 101 Allamakee St., Waukon, Iowa 52172.	Do.
Do	Appanoose	Centerville, city of.	H 19 007 1370 01 through H 19 007 1370 02	do	Mayor, City Hall, 15th and Maple, Centerville, Iowa 52544.	Do.
Do	Blackhawk	Dunkerton, town of.	H 19 013 2470 01	do	Mayor, City Hall, Dunkerton, Iowa 50626.	Do.
Do	do	Gilbertville, town of.	H 19 013 3220 01	do	Mayor's Office, City Hall, Gilbertville, Iowa 50634.	Do.
Do	do	Raymond, town of.	H 19 013 7052 01 through H 19 013 7052 02	do	Mayor, City Hall, Raymond, Iowa 50667.	Do.
Do	Bremer	Denver, town of	H 19 017 2240 01	do	Mayor, Denver, Iowa 50622	Do.
Do	Dallas	Granger, town of	H 19 049 3390 01	do	Mayor, City Hall, Granger, Iowa 50109.	Do.
Do	Plymouth	Akron, city of	H 19 149 0080 01	do	Mayor, City of Akron, City Hall, Akron, Iowa 51001.	Do.
Kansas	Doniphan	Wathena, city of	H 20 043 5690 01	Division of Water Resources, State Board of Agriculture, Topeka, Kans. 66612. Kansas Insurance Department, 1st Floor, Statehouse, Topeka, Kans. 66612.	Mayor, City Hall, Wathena, Kans. 66090.	Do.
Do	Jefferson	McLouth, city of	H 20 087 3420 01	do	Mayor, City Hall, McLouth, Kans. 66054.	Do.
Louisiana	Avoyelles Parish	Simmesport, town of.	H 22 009 2160 01 through H 22 009 2160 04	State Department of Public Works, P.O. Box 44155, Capitol Station, Baton Rouge, La. 70804. Louisiana Insurance Department, Box 44214, Capitol Station, Baton Rouge, La. 70804.	Secretary of Simmesport, Town Hall, Simmesport, La. 71369.	Do.
Do	Franklin Parish	Gilbert, village of.	H 22 041 0830 01 through H 22 041 0830 02	do	Clerk, Town of Gilbert, Gilbert, La. 71336.	Do.
Do	St. Mary Parish	Franklin, city of.	H 22 101 0780 01 through H 22 101 0780 03	do	Office of the Mayor, Municipal Bldg., 317 Willow St., Franklin, La. 70538.	Do.
Maine	Aroostook	Mapleton, town of	H 23 003 4960 01 through H 23 003 4960 03	Maine Soil & Water Conservation Commission, State House, Augusta, Maine.	Town Manager, Town Office, Mapleton, Maine 04757.	Do.
Do	Kennebec	Winslow, town of	H 23 011 9134 01 through H 23 011 9134 06	Maine Insurance Department, Capitol Shopping Center, Augusta, Maine 04330.	Manager, Town of Winslow, 16 Benton Ave., Winslow, Maine 04902.	Do.
Massachusetts	Barnstable	Eastham, town of	H 25 001 0293 01 through H 25 001 0293 02	Division of Water Resources, State Resources Commission, State Office Bldg., 100 Cambridge St., Boston, Mass. 02202. Massachusetts Division of Insurance, 100 Cambridge St., Boston, Mass. 02202.	Eastham Town Hall, Route 6, Box 8, Eastham, Mass. 02642.	Do.
Do	Berkshire	Lee, town of	H 25 003 0581 01 through H 25 003 0581 03	do	Chairman, Planning Board, Town Hall, Lee, Mass. 01238.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	Dukes	Tisbury, town of	H 25 007 1295 01	do	Chairman, Board of Selectmen, Vineyard Haven, Mass. 02568.	Do.
Do	Franklin	Montague, town of.	H 25 011 0829 01 through H 25 011 0829 05	do	Chairman, Planning Board, Town Hall, Montague, Mass. 01351.	Do.
Do	Hampden	Longmeadow, town of.	H 25 013 0624 01 through H 25 013 0624 10	do	Chairman, Planning Board, 20 Williams St., Longmeadow, Mass. 01106.	Do.
Do	Hampshire	South Hadley, town of.	H 25 015 1230 01 through H 25 017 1230 04	do	Selectman's Office, Town Hall, Main St., South Hadley, Mass. 01075.	Do.
Do	Middlesex	Ayer, town of	H 25 017 0060 01 through H 25 017 0060 05	do	Chairman, Board of Selectmen, Town Hall, Ayer, Mass. 01432.	Do.
Do	Worcester	Leominster, town of.	H 25 027 0610 01 through H 25 027 0610 08	do	Mayor, City Hall, Leominster, Mass. 01453.	Do.
Do	do	Southbridge, town of.	H 25 027 1210 01 through H 26 027 1210 09	do	Chairman, Board of Selectmen, Town Hall, Southbridge, Mass. 01550.	Do.
Minnesota	Hennepin	Maple Grove, village of.	H 27 053 4495 01 through H 27 053 4495 12	Division of Waters, Soils, and Minerals, Department of, Department of Natural Resources, Centennial Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Mayor, village of Maple Grove, 14310 93d Ave. North, Osseo, Minn. 55369.	Do.
Do	do	Minneapolis, city of.	H 27 053 4760 01 through H 27 053 4760 17	do	City Coordinator, City Hall, Minneapolis, Minn. 55402.6	Do.
Do	Washington	Newport, city of	H 27 163 5150 01 through H 27 163 5150 02	do	Newport City Hall, 600 7th Avenue, Neport, Minn. 55101.	Do.
Do	do	Oak Park Heights, village of.	H 27 163 5339 01 through H 27 163 5339 02	do	Mayor, village of Oak Park Heights, Village Hall, 14168 57th North, Stillwater, Minn. 55082.	Do.
Mississippi	Tushomingo	Burnsville, city of.	H 28 141 0360 01 through H 28 141 0360 02	Mississippi Research and Development Center, P.O. Drawer 2470, Jackson, Miss. 39205. Mississippi Insurance Department, 910 Woolfolk Bldg., P.O. Box 79, Jackson, Miss. 39205.	Mayor, City Hall, Burnsville, Miss. 38833.	Do.
Missouri	Clay	Kearney, city of	H 29 047 4130 01 through H 29 047 4130 04	Water Resources Board, P.O. Box 271, Jefferson City, Mo. 65101. Division of Insurance, P.O. Box 690, Jefferson City, Mo. 65101.	Mayor, city of Kearney, Kearney, Mo. 64060.	Do.
Do	Newton	Seneca, city of	H 29 145 7240 01 through H 29 145 7240 02	do	Seneca City Hall, 1303 Cherokee Ave., Seneca, Mo. 64865.	Do.
Do	Pike	Bowling Green, city of.	H 29 163 0940 01 through H 29 163 0940 02	do	Office of the Mayor, 15 West Church St., Bowling Green, Mo. 63334.	Do.
Do	Platte	Weston, city of	H 29 165 8310 01 through H 29 165 8310 02	do	Mayor, city of Weston, 526, Weston, Mo. 64098.	Do.
Do	St. Charles	St. Charles, city of.	H 29 183 7010 01 through H 29 183 7010 06	do	Engineering Office, 810 South Main St.	Do.
Montana	Fergus	Lewistown, city of.	H 30 027 0720 01	Montana Department of Natural Resources and Conservation, Water Resources Division, Sam W. Mitchell Bldg., Helena, Mont. 59601. Montana Insurance Department, Capitol Bldg., Helena, Mont. 59601.	Mayor, City Hall, Lewistown, Mont. 59457.	Do.
Do	Jefferson	Boulder, town of	H 30 043 0120 01	do	Mayor, City Hall, Boulder, Mont. 59632.	Do.
Do	Sanders	Plains, town of	H 30 089 0020 01	do	Mayor, Plains, Mont. 59859	Do.
Do	Teton	Choteau, city of	H 30 099 0230 01 through H 30 099 0230 02	do	Mayor, City Hall, Choteau, Mont. 59423.	Do.
Nebraska	Antelope	Elgin, village of	H 31 003 1640 01 through H 31 003 1640 02	Nebraska Natural Resources Commission, P.O. Box 94725, State House Station, Lincoln, Nebr. 68509. Nebraska Insurance Department, 1335 L St., Lincoln, Nebr. 68509.	Mayor, Elgin, Nebr. 68636	Do.
Do	Buffalo	Shelton, village of	H 31 019 4390 01	do	City Council, Shelton, Nebr. 68876	Do.
Do	Clay	Clay Center, city of.	H 31 035 1040 01	do	Mayor, City Council Office, Clay Center, Nebr. 68933.	Do.
Do	do	Harvard, city of	H 31 035 2270 01	do	Mayor, City Hall, Harvard, Nebr. 68944.	Do.
Do	Douglas	Elkhorn, city of	H 31 055 1660 01	do	Mayor, Community Bldg., 401 Glenn St., Elkhorn, Nebr. 68022.	Do.
Do	Polk	Osceola, city of	H 31 143 3690 01	do	Mayor, City Office, Osceola, Nebr. 68651.	Do.
Do	Richardson	Humboldt, city of	H 31 147 2530 01	do	City Council, 618 3d St., Humboldt, Nebr. 68376.	Do.
Do	Sheridan	Hay Springs, city of.	H 31 161 2300 01	do	Mayor, Hay Springs, Nebr. 60347	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
Do.	Wayne	Wayne, city of	H 31 179 5150 01 through H 31 179 5150 02	do	Mayor, City Hall, Wayne, Nebr. 68787.	Do.
New Hampshire.	Belknap	Tilton, town of	H 33 001 0490 01 through H 33 001 0490 04	Office of State Planning, Division of Community Planning, State House Annex, Concord, N.H. 03301. New Hampshire Insurance Department, 78 North Main St., Concord, N.H. 03301.	Normand Lemire, Senior Selectman, town of Tilton, Tilton, N.H. 03276.	Do.
Do.	Grafton	Holderness, town of.	H 33 009 0233 01 through H 33 009 0233 06	do	Chairman, Planning Board, Holderness, N.H. 03245.	Do.
Do.	Hillsborough	Amherst, town of	H 33 011 0006 01 through H 33 001 0006 10	do	Selectmen, Amherst, N.H. 03031	Do.
Do.	do	Milford, town of	H 33 011 0340 01 through H 33 011 0340 07	do	Selectmen, Milford, N.H. 03055	Do.
Do.	Merrimack	Northfield, town of.	H 33 013 0390 01 through H 33 013 0390 04	do	Selectmen, town of Northfield, Tilton, N.H. 03276.	Do.
New Jersey	Bergen	Westwood, borough of	H 34 003 3640 01 through H 34 003 3640 02	Bureau of Water Control, Department of Environmental Protection, P.O. Box 1390, Trenton, N.J. 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Administration Bldg., 51 Jefferson Ave., Westwood, N.J. 07675.	April 13, 1973 and March 22, 1974.
Do.	Gloucester	Mantua, township of.	H 34 015 1814 01 through H 34 015 1814 04	do	Mayor, South Main St., Mantua, N.J. 08051.	Do.
Do.	Monmouth	Upper Freehold, township of.	H 34 025 0040 01 through H 34 025 0040 04	do	Mayor, Township Hall, Upper Freehold, N.J.	Do.
Do.	do	Howell, township of.	H 34 025 1466 01 through H 34 025 1466 14	do	Mayor, P.O. Box 558, Howell, N.J. 07727.	
Do.	Ocean	Seaside Heights, borough of.	H 34 029 3010 01	do	Mayor, P.O. Box 38, Seaside Heights, N.J. 08751.	Do.
Do.	Somerset	Millstone, borough of.	H 34 035 1950 01	do	Borough Clerk Office, Borough of Millstone, Main St. and Yorktown Rd. Millstone, N.J.	Do.
New York	Herkimer	Frankfort, village of.	H 36 043 2120 01	New York State Department of Environmental Conservation, Division of Resources Management Services, Albany, N.Y. 12201. New York State Insurance Department, 123 William St., New York, N.Y. 10038, and Albany, N.Y. 12210.	Mayor, Village of Frankfort, 107 West Main St., Frankfort, N.Y. 13340.	Do.
Do.	Niagara	Niagara, town of	H 36 063 4210 01 through H 36 063 4210 04	do	Supervisor, Town Hall, 7105 Lockport Road, Niagara Falls, N.Y. 14304.	Do. Do.
Do.	Onandaga	De Witt, town of	H 36 067 1539 01 through H 36 067 1539 03	do	Town of De Witt, Town Hall, 6565 Kinne Rd., De Witt, N.Y. 13214.	Do.
Do.	Orange	Florida, village of	H 36 071 2030 01 through H 36 071 2030 03	do	Mayor, 635 Main St., Florida, N.Y. 10921.	Do.
Do.	do	Goshen, town of	H 36 071 2320 01 through H 36 071 2320 04	do	Supervisor, Town Hall, Webster Ave, Goshen, N.Y. 10924.	Do.
Do.	do	Montgomery, town of.	H 36 071 3841 01 through H 36 071 3841 04	do	Supervisor, Town Hall, Town of Montgomery, Walden, N.Y. 12586.	Do.
Do.	Oswego	Phoenix, village of.	H 36 075 4800 01	do	Mayor, Phoenix, N.Y. 13135	Do.
Do.	Putman	Brewster, village of.	H 36 079 0630 01	do	Mayor, Village Hall, Brewster, N.Y. 10509.	Do.
Do.	Rensselaer	Nassau, village of	H 36 083 4000 01	do	Village Board, Nassau, N.Y. 12123	Do.
Do.	Rockland	Sloatsburg, village of.	H 36 087 5760 01 through H 36 087 5760 03	do	Mayor, 96 Orange Turnpike, Sloatsburg, N.Y. 10974.	Do.
Do.	Suffolk	North Haven, village of.	H 36 103 4260 01 through H 36 103 4260 02	do	Village Clerk's Office, Main St., Sag Harbor, N.Y. 11963.	Do.
North Carolina.	Burke	Morganton, city of.	H 37 023 3130 01 through H 37 023 3130 05	North Carolina Office of Water and Air Resources, Department of Natural and Economic Resources, P.O., Box 27687, Raleigh, N.C. 27611. North Carolina Insurance Department, P.O. Box 26387, Raleigh, N.C. 27611.	City Hall, P.O. Drawer 430, Morganton, N.C. 28655.	Do.
Do.	Davidson	Thomasville, city of	H 37 057 4590 01 through H 37 057 4590 04	do	City Hamange, Thomasville, N.C. 27360.	Do.
North Dakota	McHenry	Velva, city of	H 38 049 3180 01	State Water Commission, State Office Bldg., 900 East Blvd., Bismarck, N. Dak. 58501. North Dakota Insurance Department, State Capitol, Bismarck, N. Dak. 58501.	Mayor, Velva, N. Dak. 58790	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
Do	McLean	Turtle Lake, city of.	H 38 055 3120 01	do	President, City Commission, Turtle Lake, N. Dak. 58575.	Do.
Do	do	Washburn, city of.	H 38 055 3270 01	do	President, City Commission, Washburn, N. Dak. 58577.	Do.
Do	Pierce	Rugby, city of.	H 38 069 2740 01	do	Mayor, City Hall, Rugby, N. Dak. 58368.	Do.
Ohio	Columbiana	Rogers, village of.	H 39 029 7050 01	Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224. Ohio Insurance Department, 115 East Rich St., Columbus, Ohio 43215.	Mayor, City Hall, Rogers, Ohio 44455.	Do.
Do	Cuyahoga	Bedford Heights, city of.	H 39 035 0572 01 through H 39 035 0572 02	do	Mayor, City Hall, 65 Columbus Rd., Bedford, Ohio 44113.	Do.
Do	do	East Cleveland, city of.	H 39 035 2340 01	do	Mayor, City Hall, 14340 Euclid Ave., East Cleveland, Ohio 44112.	Do.
Do	do	Parma Heights, village of.	H 39 035 6370 01 through H 39 035 6370 02	do	Mayor, City Hall, 6281 Pearl Rd., Parma Heights, Ohio 44130.	Do.
Do	do	Richmond Heights, city of.	H 39 035 6910 01 through H 39 035 6910 02	do	Mayor, City Hall, 457 Richmond Rd., Richmond, Ohio 44124.	Do.
Do	do	Seven Hills, city of.	H 39 035 7380 01	do	Mayor, City Hall, 7247 Broadway, Seven Hills, Ohio 44105.	Do.
Do	do	South Euclid, city of.	H 39 035 7670 02 through H 39 035 7670 02	do	Mayor, City Hall, 1349 South Green Rd., South Euclid, Ohio 44121.	Do.
Do	Erie	Bay View, village of.	H 39 043 0511 01	do	Village Municipal Bldg., 304 East Bay View Dr., Bay View, Ohio 44870.	Do.
Do	Geauga	Middlefield, village of.	H 39 055 4980 01 through H 39 055 4980 02	do	Mayor, 14974 South State St., Middlefield, Ohio 44062.	Do.
Do	Hancock	Van Buren, village of.	H 39 063 8350 01 through H 39 063 8350 02	do	Mayor, City Hall, Van Buren, Ohio 45889.	Do.
Do	Holmes	Holmesville, village of.	H 39 075 3580 01	do	Mayor, Holmesville, Ohio 44633	Do.
Do	Huron	Willard, city of	H 39 077 8080 01 through H 39 077 8080 02	do	Mayor, City Hall, Willard, Ohio 44890	Do.
Do	Jefferson	Rayland, village of.	H 39 081 6850 01	do	Mayor's Office, Rayland, Ohio 43943	Do.
Do	Lake	Perry, village of	H 39 085 6480 01 through H 39 085 6480 07	do	Mayor, Village Hall, 4203 Harper St., Perry, Ohio 44081.	Do.
Do	Medina	Chippewa-On-The-Lake, village of.	H 39 103 1590 01	do	Mayor, City Hall, Chippewa-On-The-Lake, Ohio 44215.	Do.
Do	do	Medina, city of	H 39 103 4890 01 through H 39 103 4890 04	do	Mayor, City Hall, 132 North Elmwood, Medina, Ohio 44256.	Do.
Do	Summit	Peninsula, village of.	H 39 153 6460 01 through H 39 153 6460 02	do	Chairman, Board of Public Affairs, Peninsula, Ohio 44264.	Do.
Do	Union	Marysville, city of.	H 39 159 4800 01 through H 39 159 4800 02	do	City Manager, City Hall, Marysville, Ohio 43040.	Do.
Do	Wood	Perrysburg, city of.	H 39 173 6490 01 through H 39 173 6490 03	do	Mayor, 201 West Indiana, Perrysburg, Ohio 43551.	Do.
Oklahoma	Muskogee	Muskogee, city of.	H 40 101 3310 01 through H 40 101 3310 08	Oklahoma Water Resources Board, 2241 Northwest 40th St., Oklahoma City, Okla. 73112. Oklahoma Insurance Department, Room 408, Will Rogers Memorial Bldg., Oklahoma City, Okla. 73105.	Mayor, City Hall, Muskogee, Okla. 74401.	Do.
Do	Pontotoc	Roff, city of	H 40 123 4070 01 through H 40 123 4070 02	do	Mayor, Roff, Okla. 74865	Do.
Oregon	Grant	John Day, city of.	H 41 023 1120 01 through H 41 023 1120 02	Executive Department, State of Oregon, Salem, Oreg. 97310. Oregon Insurance Division, Department of Commerce, 158 12th St., N.E., Salem, Oreg. 97310.	City of John Day, 240 South Canyon Blvd., John Day, Oreg. 97845.	
Do	Josephine	Grants Pass, city of.	H 41 033 0860 01 through H 41 033 0860 04	do	Mayor, City Courthouse, Grants Pass, Oreg. 97526.	Do.
Do	Lane	Veneta, city of	H 41 039 3145 01 through H 41 039 3145 02	do	Mayor, City Hall, Veneta, Oreg. 97487.	Do.
Do	Lincoln	Waldport, city of.	H 41 041 2160 01	do	Mayor, City Hall, Waldport, Oreg. 97376.	

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
Pennsylvania	Allegheny	West Mifflin, borough of.	H 42 003 9170 01 through H 42 003 9170 05	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Mayor, Box 24, West Mifflin, Pa. 15122.	Do.
Do.	Beaver	Baden, borough	H 42 007 0390 01 through H 42 007 0390 04	do.	Mayor, Boro Bldg., Baden, Pa. 15005.	Do.
Do.	do.	Harmony, township of.	H 42 007 3481 01 through H 42 007 3481 04	do.	Township Municipal Bldg., Woodland and Breitenstein Rds., Ambridge, Pa. 15003.	Do.
Do.	do.	Vanport, township of.	H 42 007 8752 01	do.	Board of Supervisors, Township Municipal Bldg., 477 State St., Vanport, Pa. 15009.	Do.
Do.	Berks	Shoemakersville, borough of.	H 42 011 7690 01	do.	Mayor, 506 Main St., Shoemakersville, Pa. 19555.	Do.
Do.	Bucks	Newton, borough of.	H 42 017 5950 01 through H 42 017 5950 02	do.	Borough Hall, Borough of Newton Newton, Pa.	Do.
Do.	Clinton	Colebrook, township of.	H 42 035 1524 01 through H 42 067 5190 03	do.	Township of Colebrook, Secretary, Farrandsville, Pa. 17734.	Do.
Do.	Juniata	Mifflintown, borough of.	H 42 067 5190 01	do.	Chairman, Board of Supervisors, Mifflintown, Pa. 17059.	Do.
South Dakota	Brookings	Brookings, city of.	H 46 011 0360 01 through H 46 011 0360 03	South Dakota Planning Agency, State Capitol Bldg., Pierre, S. Dak. 57501. South Dakota Department of Insurance, Insurance Bldg., Pierre, S. Dak. 57501.	City Planning Commission, Through the City Commission, City Hall, Brookings, S. Dak. 57006.	Do.
Do.	Clay	Vermillion, city of.	H 46 027 2730 01 through H 46 027 2730 02	do.	Mayor, City Hall, Vermillion, S. Dak. 57069.	Do.
Do.	Davison	Mitchell, city of.	H 46 035 1850 01 through H 46 035 1850 05	do.	Mayor and City Council, City Hall, Mitchell, S. Dak. 57301.	Do.
Do.	Yankton	Yankton, city of.	H 46 135 3070 01	do.	Yankton City Planning and Zoning Board, Yankton, S. Dak. 57078.	Do.
Tennessee	Anderson	Oliver Springs, city of.	H 47 001 1870 01 through H 47 001 1870 05	Tennessee State Planning Office, 660 Capitol Hill Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Mayor, Oliver Springs, Tenn.	Do.
Do.	Lancaster	Washington, borough of.	H 42 071 8870 01	do.	Washington Borough Fire House, Lancaster St., Washington Boro, Pa. 17582.	Do.
Do.	Luzerne	Hunlock, township of.	H 42 079 3813 01 through H 42 079 3813 06	do.	Hunlock Township Firehall, Rural Delivery No. 1, Hunlock Creek, Pa. 18621.	Do.
Do.	do.	Wyoming, borough of.	H 42 079 9520 01 through H 42 079 9520 02	do.	Wyoming Borough Town Hall, 277 Wyoming Ave., Wyoming, Pa. 18644.	February 9, 1973 and March 22, 1974.
Do.	Lycoming	Anthony, township of.	H 42 081 0178 01 through H 42 081 0178 02	do.	Charles A. Foster, Secretary, Linden, Pa. 17744.	Do.
Do.	Montgomery	Conshohocken, borough of.	H 42 091 1630 01	do.	Conshohocken Borough Hall, 8th and Fayette Sts., Conshohocken, Pa. 19428.	Do.
Do.	Tioga	Wellsboro, borough of.	H 42 117 8960 01 through H 42 117 8960 06	do.	Borough of Wellsboro, Wellsboro, Pa. 16901.	Do.
Do.	York	Springettsbury, township of.	H 42 133 9610 01 through H 42 133 9610 08	do.	Springetts Township, 1501 Mt. Zion Rd., York, Pa. 17402.	Do.
Texas	Dallas	Hutchins, city of.	H 48 113 3350 01 through H 48 113 3350 05	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701.	Mayor, P.O. Box AE, Hutchins, Tex. 75141.	Do.
Do.	Fayette	La Grange, city of.	H 48 149 3790 01 through H 48 149 3790 02	do.	Mayor, P.O. Box 339, La Grange, Tex. 78945.	Do.
Do.	Hidalgo	San Juan, city of.	H 48 215 6160 01	do.	Mayor, 709 South Nebraska, San Juan, Tex. 78589.	Do.
Do.	Kaufman	Kaufman, city of.	H 48 257 3590 01	do.	Mayor, City Hall, Kaufman, Tex. 75142.	Do.
Do.	Kimble	Junction, city of.	H 48 267 3550 01 through H 48 267 3550 03	do.	Mayor, City Hall, Junction, Tex. 76849.	Do.
Do.	Lubbock	Slaton, city of.	H 48 303 6410 01 through H 48 303 6410 04	do.	Mayor, City Hall, Slaton, Tex. 79364.	Do.
Do.	Orange	Vidor, city of.	H 48 361 7200 01 through H 48 361 7200 04	do.	City of Vidor, City Hall, Vidor, Tex. 77662.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*		*	*	*	*
Do	Smith	Lindale, city of	H 48 423 3990 01 through H 48 423 3990 02	do	Mayor, City Hall, Lindale, Tex. 75771	Do.
Do	Tarrant	Euless, city of	H 48 439 2255 01 through H 48 439 2255 06	do	Mayor, 201 Ector Dr., Euless, Tex. 76039.	Do.
Vermont	Chittenden	Richmond, town of.	H 50 007 0570 01 through H 50 007 0570 03	Management and Engineering Division, Water Resources Department, State Office Bldg., Montpelier, Vt. 05602. Vermont Insurance Department, State Office Bldg., Montpelier, Vt. 05602.	Chairman, Richmond Board of Selectmen, Richmond, Vt. 05477.	Do.
Do	Franklin	Swanton, village of.	H 50 011 0650 01 through H 50 011 0650 02	do	President, Municipal Bldg., Swanton, Vt. 05488.	Do.
Virginia	Independent City	Pennington Gap, city of.	H 51 105 1900 01 through H 51 105 1900 03	Bureau of Water Control Management, State Water Control Board, 2d floor, Davenport Bldg., 11 South 10 St., Richmond, Va. 23219. Virginia Insurance Department, 700 Blanton Bldg., P.O. Box 1157, Richmond, Va. 23209.	Mayor, City Hall, Pennington Gap, Va. 24277.	Do.
Do	Scott	Dungannon, town of.	H 51 169 0820 01	do	Mayor, Town Hall, Dungannan, Va. 24245.	Do.
Washington	Benton	West Richland, town of.	H 53 005 2475 01 through H 53 005 2475 02	Department of Ecology, Olympia, Wash. 98501. Washington Insurance Department, Insurance Bldg., Olympia, Wash. 98501.	City Council, City Hall, 5456 West Van Fiesen, West Richland, Wash. 99352.	Do.
Do	King	Redmond, city of	H 53 033 1820 01 through H 52 033 1821 11	do	Mayor, City Hall, 15670 Northeast 85th St., Redmond, Wash. 98052.	Do.
West Virginia	Kanawha	East Bank, town of.	H 54 039 0720 01	Office of Federal-State Relations, Room West 115, Capitol Bldg., Charleston, W. Va. 25305. West Virginia Insurance Department, State Capitol, Charleston, W. Va. 25305.	Mayor, City Hall, East Bank, W. Va. 25067.	Do.
Do	Marshall	Moundsville, city of	H 54 051 1850 01 through H 54 051 1850 02	do	City Manager, Moundsville City Bldg., Moundsville, W. Va. 26041.	Do.
Wisconsin	Milwaukee	Oak Creek, city of	H 55 079 3475 01 through H 55 079 3475 09	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53701.	City of Oak Creek, Plan Comm., city of Oak Creek, 8640 South Howell Ave., Oak Creek, Wis. 53154.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Pub. L. 91–152, Dec. 24, 1969) (42 U.S.C. 4001–4127); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: March 18, 1974.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.74–6953 Filed 3–26–74;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Acetic and Propionic Acids

A petition (PP 3F1411) was filed by Celanese Chemical Co., New York, NY 10017, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of tolerances for residues of acetic acid at 5,000 parts per million and propionic acid at 20,000 parts per million in or on the raw agricultural commodities alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, pea vine hay, soybean hay, sudan grass, rye grass, timothy, and vetch from postharvest application.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The pesticide chemicals are useful as fungicides when applied postharvest to the above raw agricultural commodities.

2. Exemption from tolerances rather than finite tolerances should be established.

3. The present restrictions in § 180.303 and § 180.1023 limiting use of acetic and propionic acids respectively to grains intended for use as animal feed are not necessary to protect the public health and should be deleted.

4. Established tolerances (§ 180.303) for residues of acetic acid in or on grains should be converted to an exemption from the requirement of tolerances.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), Part 180 is amended as follows:

§ 180.303 [Deleted]

1. Section 180.303 *Acetic acid; tolerances for residues* is deleted from Subpart C.

2. A new section is established in Subpart D to read as follows:

§ 180.1029 Acetic acid; exemption from the requirement of a tolerance.

Acetic acid, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, pea vine hay, sorghum grain, soybean hay, sudan grass, rye grass, timothy, vetch and wheat grain.

3. Section 180.1023 is revised to read as follows:

§ 180.1023 Propionic acid; exemption from the requirement of a tolerance.

Propionic acid, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, pea vine hay, sorghum grain, soybean hay, sudan grass, rye grass, timothy, vetch and wheat grain.

Any person who will be adversely affected by the foregoing order may at any time on or before April 26, 1974 file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, S.W., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective March 27, 1974.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: March 18, 1974.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-6999 Filed 3-26-74;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 126]

PART 1-16—PROCUREMENT FORMS

New Edition of Standard Forms

This amendment of the Federal Procurement Regulations prescribes the use of the July 1973 edition of Standard Form 19, Invitation, Bid, and Award (Construction, Alteration or Repair), and the November 1972 edition of Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000. The changes in the forms are limited to the addition of new and revised contract provisions which were previously approved for use in connection with the prior edition of these forms. Minor editorial changes are also included.

Subpart 1-16.4—Forms for Advertised Construction Contracts

Section 1-16.401 is amended as follows:

§ 1-16.401 Forms prescribed.

* * * * *

(a) Invitation, Bid, and Award (Construction, Alteration or Repair) (Standard Form 19, July 1973 edition).

(b) Labor Standards Provision Applicable to Contracts in Excess of $2,000 (Standard Form 19-A, November 1972 edition).

* * * * *

Subpart 1-16.9—Illustration of Forms

Sections 1-16.901-19 and 1-16.901-19-A are revised to illustrate the revised editions of Standard Forms 19 and 19-A.

§ 1-16.901-19 Standard Form 19, Invitation, Bid, and Award (Construction, Alteration or Repair).

(a) Page 1 of Standard Form 19. (Insert form, copy attached)

(b) Page 2 of Standard Form 19. (Insert form, copy attached)

§ 1-16.901-19-A Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000.

(a) Page 1 of Standard Form 19-A. (Insert form, copy attached)

(b) Page 2 of Standard Form 19-A. (Insert form, copy attached)

Availability of forms. It is anticipated that copies of these forms will be available for use by April 29, 1974.

(Sec. 205(c) 63 Stat. 390 (40 U.S.C. 486(c)))

Effective date. This regulation is effective May 27, 1974, but may be observed as soon as copies of the new editions of the standard forms prescribed herein are available.

Dated: February 26, 1974.

ARTHUR F. SAMPSON,
Administrator of General Services.

FORM APPROVED O.M.B. NO. 29-R0122

STANDARD FORM 19 JULY 1973 EDITION GENERAL SERVICES ADMINISTRATION FED. PROC. REG. (41 CFR) 1-16.401	**INVITATION, BID, AND AWARD** (Construction, Alteration or Repair) ☐ CHECK IF SMALL BUSINESS SET-ASIDE OR OTHER NEGOTIATED PROCUREMENT *(If checked, "Bid" includes "Proposal")*	REFERENCE *(Include in correspondence)*

INVITATION FOR BIDS	DATE ISSUED:
ISSUING OFFICE *	BID RECEIVING OFFICE *

Information regarding bidding material may be obtained from the issuing office.

SEALED BIDS in covering work described in specifications, schedules, drawings and conditions entitled and dated as follows:

will be received at the Bid Receiving Office until _____ *(Hour)* local time at place of bid opening _____ *(Date)* and at that time publicly opened.

Sealed envelopes containing bids shall be addressed to the Bid Receiving Office and shall be marked to show: Bidder's Name and Address;* Reference Time and Date of Opening;

BID *(This Section to be completed by Bidder)*	→ DATE BID SUBMITTED:

The undersigned agrees, if this bid is accepted within calendar days *(30 days unless a different period is inserted)* after date of opening, to complete all work specified in strict accordance with the above-identified documents and the General Provisions on the reverse hereof, within calendar days after receipt of notice to proceed, for the following amount _____

including all applicable Federal, State, and local taxes. The undersigned further agrees, if any contract award resulting from this bid exceeds $2,000, TO COMPLY with the provisions of Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000 and TO FURNISH a performance bond in an amount equal to 100 percent and a payment bond in an amount equal to 50 percent of the contract price with surety or sureties acceptable to the Government, on Government forms within days after forms are furnished.

SPECIMEN

The representations and certifications on the accompanying STANDARD FORM 19-B are made a part of this bid.

NAME AND ADDRESS OF BIDDER *(Street, City, State)* * *(Type or print.)*	SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS BID →
	SIGNER'S NAME AND TITLE *(Type or print.)*
AREA CODE & PHONE NO.	
AWARD *(This Section for Government only)*	DATE OF AWARD:

THE ABOVE BID IS ACCEPTED IN THE AMOUNT OF $

☐ YOU ARE DIRECTED TO PROCEED WITH THE WORK UPON RECEIPT OF THIS AWARD.

☐ NOTICE TO PROCEED WILL BE ISSUED UPON RECEIPT OF ACCEPTABLE PAYMENT AND PERFORMANCE BONDS.

	THE UNITED STATES OF AMERICA BY _____ *(Contracting Officer)* _____ *(Title)*

*Include "ZIP CODE" in all mailing addresses. 19-116

GENERAL PROVISIONS

1. CHANGES AND CHANGED CONDITIONS

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer in writing of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site, before proceeding further with the work.

(c) If changes under (a) or conditions under (b) increase or decrease the cost of, or time required for, performing the work, upon assertion of a claim by the Contractor before final payment under the contract, a written equitable adjustment shall be made; except that no adjustment under (b) shall be made unless the notice required therein was given or unless the Contracting Officer waives the requirement therefor. If the adjustment cannot be agreed upon, the dispute shall be decided pursuant to Clause 3.

2. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor does not prosecute the work so as to insure completion, or fails to complete it, within the time specified, the Government may, by written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under (a) above because of any delays in completion of the work due to causes other than normal weather, beyond his control and without his fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence: Provided, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final payment under the contract, notify the Contracting Officer in writing of the causes of delay and the facts relating thereto. The Contracting Officer shall consider the facts and ascertain the extent of the delay, and extend the time for completing the work when in his judgment the facts justify such an extension, and his decision shall be final and conclusive on the parties, subject only to appeal as provided in Clause 3.

(c) As used in paragraph (b) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

3. DISPUTES

Any dispute concerning a question of fact arising under this contract, not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and furnish a signed copy to the Contractor. Such decision shall be final and conclusive unless, within 30 days from the date of receipt thereof, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal, addressed to the head of the Federal agency. The Contractor shall be afforded an opportunity to be heard and to offer evidence. The decision of the head of the Federal agency or his authorized representative shall be final and conclusive unless fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

4. RESPONSIBILITY OF CONTRACTOR

At his own expense the Contractor shall: (a) obtain any necessary licenses and permits; (b) provide competent superintendence; (c) take precautions necessary to protect persons or property against injury or damage and be responsible for any such injury or damage that occurs as a result of his fault or negligence; (d) perform the work without unnecessarily interfering with other contractors' work or Government activities; (e) be responsible for all damage to work performed and materials delivered (including Government-furnished items), until completion and final acceptance.

5. MATERIAL AND WORKMANSHIP

All material incorporated in the work shall be new and the work shall be performed in a skillful and workmanlike manner. Both materials and workmanship shall be subject to the inspection of the Contracting Officer or his duly authorized representative who may require the Contractor to correct defective workmanship or materials without cost to the Government.

6. PAYMENTS TO CONTRACTOR

Progress payments equal to 90 percent of the value of work performed may be made monthly on estimates approved by the Contracting Officer. Upon payment therefor, title to the property shall vest in the Government. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.

7. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. BUY AMERICAN.

The Contractor, subcontractors, material men, and suppliers must comply with the Buy American Act of March 3, 1933 (41 U.S.C. 10a–10d) and Executive Order 10582 of December 17, 1954 (19 Fed. Reg. 8723). (In substance the above requires use generally of domestic materials except as otherwise authorized by the Contracting Officer pursuant to the Act and Executive Order.)

9. ASSIGNMENT OF CLAIMS

If this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due hereunder may be assigned as provided in 31 U.S.C. 203 and 41 U.S.C. 15.

10. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

11. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

(a) If an appeal is filed by the contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his notice of appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution giving confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

13. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

The clause entitled "Examination of Records by Comptroller General" prescribed by 41 CFR Subpart 1–7.1 is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

14. UTILIZATION OF SMALL BUSINESS CONCERNS

(The following clause is applicable if this contract exceeds $5,000.)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

15. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(The following clause is applicable if this contract exceeds $5,000.)

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

STANDARD FORM 19 (Rev. 7-73) [Back]

* U.S. GOVERNMENT PRINTING OFFICE: 1974 O—510-488 (38-C)

FORM APPROVED O.M.B. NO. 29-R0121

LABOR STANDARDS PROVISIONS

APPLICABLE TO CONTRACTS IN EXCESS OF $2,000

1. DAVIS-BACON ACT (40 U.S.C. 276a-276a-7)

(a) All mechanics and laborers, including apprentices and trainees, employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations, 29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations, (29 CFR Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this clause only where they are employed pursuant to an apprenticeship or trainee program meeting the requirements of the Apprentices and Trainees clause below.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic, including apprentices and trainees, employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and Subcontractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327–333).

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) The Contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards, in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic, including apprentices, trainees, watchmen, and guards, receives compensation at a rate not less than 1½ times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour exclusive of the Contractor's contribution or cost for fringe benefits, and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including an apprentice, trainee, watchman, or guard, employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

3. APPRENTICES AND TRAINEES

(a) Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not a trainee as defined in paragraph (b) of this clause, and who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor shall furnish to the Contracting Officer written evidence of the registration of his program and apprentices, as well as of the appropriate ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where applicable) to be eligible for probationary employment as an apprentice.

(b) Trainees shall be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The term "trainee" means a person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

(c) In connection with contracts in excess of $10,000, the Contractor agrees as follows:

(1) The Contractor shall make a diligent effort to hire for performance of work under this contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as set forth in paragraph (c)(7) of this clause.

(2) The Contractor shall insure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (i) the availability of training opportunities for first year apprentices, (ii) the hazardous nature of the work for beginning workers, and (iii) excessive unemployment of apprentices in their second and subsequent years of training.

(3) The Contractor shall, during the performance of the contract, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of paragraph (c)(1) and (c)(2) of this clause.

(4) The Contractor shall maintain records of employment on this contract by trade of the number of apprentices and trainees, apprentices and trainees in first year of training, and of journeymen, and wages paid and hours of work of such apprentices, trainees, and journeymen. In addition, the Contractor who claims compliance based on the criterion set forth in paragraph (c)(6)(ii) of this clause shall maintain such records of employment on all his construction work in the same labor market area, both public and private, during the performance of this contract. In each of the above cases the Contractor shall make such records available for inspection upon request of the Department of Labor or the Contracting Officer.

(5) The Contractor shall supply one copy of each of the written notices required in accordance with paragraph (c)(6)(iii) of this clause at the request of the Contracting Officer. The Contractor also agrees to supply at 3-month intervals during the performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to the Contracting Officer and one copy to the Secretary of Labor.

(6) The Contractor will be deemed to have made a "diligent effort" as required by paragraph (c)(1) if during the performance of this contract, he accomplishes at least one of the following three objectives: (i) The Contractor employs under this contract a number of apprentices and trainees by craft, at least equal to the ratios established in accordance with paragraph (c)(7) of this clause, or (ii) the Contractor employs, on all his construction work, both public and private, in the same labor

STANDARD FORM 19-A
NOVEMBER 1972 EDITION
GENERAL SERVICES ADMINISTRATION
FPR (41 CFR) 1-16.401

SPECIMEN

market area, an average number of apprentices and trainees by craft at least equal to the ratios established in accordance with paragraph (c)(7) of this clause, or (iii) the Contractor (A) if covered by a collective bargaining agreement, before commencement of any work on the project, has given written notice to all joint apprenticeship committees, the local U.S. Employment Security Office, local chapter of the Urban League, Workers Defense League, or other local organizations concerned with minority employment, and the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the locality of the work; (B) if not covered by a collective bargaining agreement, has given written notice to all of the groups stated above, except joint apprenticeship committees, and will in addition notify all non-joint apprenticeship sponsors in the labor market area; (C) has employed all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees and where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by paragraph (c)(7) of this clause. The notice, as referred to herein, will include at least the Contractor's name and address, the agency designation, the contract number, job site address, value of the contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract work, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with paragraph (c)(7) of this clause.

(7) The Contractor recognizes that the Secretary of Labor has determined that the applicable ratios of apprentices and trainees to journeymen in any occupation for the purpose of this clause shall be as follows: (i) In any occupation the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is being undertaken, set forth in collective bargaining agreements, or other employment agreements, and available through the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the applicable area; (ii) for any occupation for which no ratio is found, the ratio of apprentices and trainees to journeymen shall be determined by the Contractor in accordance with the recommendations set forth in the Standards of the National Joint Apprentice Committee for the occupation, which are on file at offices of the U.S. Department of Labor's Bureau of Apprenticeship and Training; and (iii) for any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for every five journeymen.

4. PAYROLLS AND BASIC RECORDS

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics, including apprentices, trainees, watchmen, and guards working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) the clause entitled "Davis-Bacon Act," he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including apprentices and trainees, conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "Davis-Bacon Act."

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

5. COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

6. WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics, including apprentices, trainees, watchmen, and guards employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of any Contractor and Subcontractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation."

(b) If any Contractor or subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or guard employed or working on the site of work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

7. SUBCONTRACTS

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment", in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

8. CONTRACT TERMINATION—DEBARMENT

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

9. DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

★ U.S. GOVERNMENT PRINTING OFFICE: 1973—O-510-458 #40-C

SPECIMEN

STANDARD FORM 19-A (Rev. 11-72) (Back)

[FR Doc.74-6918 Filed 3-26-74; 8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER Q—SPECIFICATIONS

[CGD 73-103R]

PART 160—LIFESAVING EQUIPMENT

Safety Features for Handcranking Power-Driven Winches

The purpose of these amendments to the regulations governing lifeboat winches for merchant vessels is to eliminate a duplication presently existing in the requirements for power-driven winches and to relocate a pertinent sentence applicable to hand cranks.

In the August 21, 1973 issue of the FEDERAL REGISTER (38 FR 22492), the Coast Guard proposed revising the present requirements for lifeboat winches by eliminating a duplication affecting power-driven winches and relocating a provision pertaining to the requirements for handcranking.

No written comments were received on the proposal.

In consideration of the foregoing, the proposed amendments to the regulations published in the August 31, 1973 issue of the FEDERAL REGISTER (38 FR 22492) are adopted and set forth below. Compliance with these amendments prior to the effective date is considered by the Coast Guard as compliance with the existing regulations.

Part 160 of Title 46 of the Code of Federal Regulations is amended as follows:

1. By revoking § 160.015-3(j)(1).

2. By revising the last sentence of § 160.015-3(1) to read:

"Mechanical means for accomplishing the above, such as throw-out couplings on the sockets of the hand cranks, will be given special consideration."

(46 U.S.C. 391a, 404, 481, 489; 49 U.S.C. 1655 (b)(1), and 49 CFR 1.46(b) and (o)(4)).

Effective date. This amendment is effective March 27, 1974.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.74-6990 Filed 3-26-74;8:45 am]

Title 4—Accounts

CHAPTER I—GENERAL ACCOUNTING OFFICE

SUBCHAPTER D—TRANSPORTATION

PART 52—FREIGHT TRANSPORTATION SERVICES FURNISHED FOR THE ACCOUNT OF THE UNITED STATES

Acceptance and Use of Government Bill of Lading

Part 52 is amended by the addition of a new § 52.51 as follows:

52.51 General conditions governing acceptance and use of Government bill of lading.

(a) In no case shall prepayment of charges be demanded by the carrier nor collection be made from the consignee. The Government bill of lading, properly certified and attached to Public Voucher for Transportation Charges, will be presented to the paying office indicated in the "Charges To Be Billed To" box on the face of the bill of lading for payment to:

(1) The last carrier or forwarder in privity with the contract of carriage as evidenced by the covering bill of lading; or

(2) A participating carrier or forwarder in privity with the contract of carriage as evidenced by the covering bill of lading, when submitted with a waiver accomplished by the last carrier (as described in paragraph (a)(1) of this section) in favor of the billing carrier; or

(3) A carrier (as described in paragraph (a)(1) of this section) or its properly designated warehouse agent as authorized in the paragraph of title 5 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies (GAO Manual) dealing with certification of shipments in storage; or

(4) An agent of the carrier or forwarder (as described in paragraph (a)(1) or (a)(2) of this section) so long as the bill is submitted in the name of the principal. The agent's mailing address may be shown in such bills and the checks drawn in the name of the principal may be mailed to the agent.

(b) The Government bill of lading is subject to the same rules and conditions as govern shipments made on the usual commercial forms, unless otherwise specifically provided or stated in title 5 of the GAO Manual.

((c) Shipments made upon the Government bill of lading shall take a rate no higher than that chargeable had the shipment been made upon the uniform straight bill of lading, uniform express receipt, or any other forms provided for commercial shipments.

(d) No charge shall be made by any carrier for the execution and presentation of Government bills of lading in manner and form as provided herein or in title 5 of the GAO Manual.

(e) The shipment is made at the restricted or limited valuation specified in pursuant to section 22 of the Interstate Commerce Act, as amended, or to other equivalent contract, arrangement, or exemption from regulation at or under which the lowest rate is available, unless otherwise indicated on the face of the Government bill of lading.

(f) Receipt for the shipment is subject to the annotation of loss, damage, or shrinkage made by the consignee on the delivering carrier's documents and the consignee's copy of the same documents. When loss or damage is not discovered until after delivery of shipment and receipt therefor, the consignee shall notify the nearest office of last delivering carrier immediately, by telephone if located within the vicinity, and extend privilege of examining the shipment.

(g) In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carrier or to period within which claim therefor shall be made or suit instituted. Deletion of this item will be considered valid only with the concurrence, in writing, of the Government official responsible for making shipment.

(h) Carrier's rights to shipping charges are not affected by facts set out in the

issuing office part of the Government bill of lading.

(i) The nondiscrimination clauses contained in section 202 of Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, creed, color, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated in the Government bill of lading.

(Sec. 311, 42 Stat. 25, as amended (31 U.S.C. 52); Interpret or apply sec. 309, 42 Stat. 25 (31 U.S.C. 49); sec. 322, 54 Stat. 955, as amended; 86 Stat. 1163 (49 U.S.C. 66))

[SEAL] ELMER B. STAATS,
Comptroller General of the United States.

[FR Doc.74-7076 Filed 3-26-74;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

Reporting by Retail Firms

Section 150.311 is amended by adding a new paragraph (c) to require continued quarterly reporting by price category I and II retail firms with sales that are exempt under § 150.54(ff). The purpose of this new paragraph (c) is to provide the Council with the means to monitor post-exemption pricing behavior in the retail trade sector generally and to monitor the extent to which the ten major retail firms which made pricing and profit commitments to the Council at the time of the retail exemption are abiding by those commitments.

The new § 150.311(c) requires submission of quarterly reports (not including the Schedule T) through the fiscal quarter which includes August 1, 1974. In addition, each of the ten firms which made commitments must attach to the quarterly report a statement which explains the extent to which the specific commitment made by the firm was observed during the quarter for which the report is submitted.

Because the purpose of this amendment is to grant immediate guidance under the Phase IV price regulations, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 92-28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective March 26, 1974.

Issued in Washington, D.C., on March 26, 1974.

JAMES W. MCLANE,
Deputy Director, Cost of Living Council.

In 6 CFR Part 150, § 150.311 is amended to read as follows:

§ 150.311 Reporting.

* * * * *

(c) Notwithstanding § 150.161(b)(1) of this title, each price category I or II firm with sales that are exempt under § 150.54(ff) remains subject to paragraphs (a) and (b) of this section with respect to all reports called for by those paragraphs through the fiscal quarter which includes August 1, 1974. Such a firm, however, may exclude the Schedule T from a report filed pursuant to this section. In addition, a firm which made a commitment to the Council in connection with the exemption in § 150.54(ff) shall attach to each report a statement explaining the extent to which the commitment was observed during the quarter that is the subject of the report.

[FR Doc.74-7235 Filed 3-26-74;9:41 am]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1126, 1121, 1127, 1128, 1129, 1130]

[Docket Nos. AO–231–A41, etc.]

MILK IN THE NORTH TEXAS AND CERTAIN OTHER MARKETING AREAS

Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments and to Order

Notice is hereby given of the filing with the Hearing Clerk of this partial recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the South Texas marketing area.

7 CFR part	*Marketing Area*	*Docket No.*
1126	North Texas	AO–231–A41
1121	South Texas	AO–364–A8
1127	San Antonio, Texas	AO–232–A27
1128	Central West Texas	AO–238–A30
1129	Austin-Waco, Texas	AO–256–A23
1130	Corpus Christi, Texas	AO–259–A27

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, by April 8, 1974. Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Preliminary Statement

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Dallas, Texas, on December 3–7, 1973, and January 22–25, 1974, pursuant to notice thereof which was issued on November 9, 1973 (38 FR 31432).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the present North Texas, South Texas, San Antonio, Central West Texas, Austin-Waco and Corpus Christi orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory in the States of Texas and Arkansas;

4. If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices, butterfat differentials, and location adjustments;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions;

5. Need for amending the classification and pricing provisions of the South Texas order prior to any merger of orders; and

6. Whether an emergency exists to warrant the omission of a recommended decision with respect to Issue 5.

This partial decision deals only with Issues 5 and 6. The remaining issues are reserved for a later decision.

Findings and Conclusions

The following findings and conclusions on Issues 5 and 6 are based on evidence presented at the hearing and the record thereof:

5. *Classification and pricing of milk under the South Texas order.* A new classification and pricing plan for milk should apply in the South Texas Market at such time as similar plans become effective in the other Texas Federal order markets.

As set forth in recent decisions of the Assistant Secretary, it has been determined that a uniform milk classification plan should be incorporated in 39 milk orders, including all orders in Texas except the South Texas order.[1] Upon producer approval and effectuation of the proposed amended orders, each of the 39 orders will provide for three classes of utilization, with the milk uses included in each class being the same for each order. The same basic procedure will be used for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order will use the same Class II and Class IIII prices, as well as a single butterfat differential.

At the hearing to consider the merger of the aforesaid six Texas orders, it was proposed that the same general classification plan be adopted for the proposed merged order. It was generally recognized, however, that the merger action could not be completed by the time the classification changes in the individual orders presumably would become effective. Since the South Texas order would not be similarly changed at that time, certain producer groups and handlers proposed or supported the incorporation of the new classification plan in the South Texas order during the interim period preceding any merger.

Proponents claimed that the South Texas order was not included in the 39-market classification proceedings because of pending litigation on the possible termination of the order. They contended that with the recent resolution of the legal matter steps should be taken to effectuate in the South Texas market the same classification and pricing changes that are expected to be implemented in the other Texas markets. Proponents stressed that the intermarket competition now existing among handlers in the several Texas markets, including South Texas, makes it necessary that all of the Texas orders be amended in this respect at the same time. There was no opposition to the proposal.

As already noted, the changes in the other orders will provide for three classes of utilization. Only two classes are provided under the present South Texas order. Under the other Texas orders, such products as cream, cottage cheese and ice cream will be included in a "middle" class and priced at the Minnesota-Wisconsin price for the month plus 10 cents. Under the South Texas order, cream is a Class I product, with the Class I price being the Minnesota-Wisconsin price for the second preceding month plus $2.68. Producer milk used in cottage cheese and ice cream, on the other hand, is now classified as Class II milk under the South Texas order. The applicable class price is the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. In recent months, the latter price determinant has prevailed. The South Texas Class II price in December 1973, for example, was $1.23 under the price that would have applied to such milk uses under the new classification plan. Similarly, the South Texas Class II

[1] Official notice is taken of two decisions issued by the Assistant Secretary on February 19, 1974, concerning the classification and pricing of milk under 32 orders (Georgia, et al., 39 F.R. 8452, 8712, 9012) and under 7 orders (Chicago Regional, et al., 39 F.R. 8202).

price for milk used in butter, nonfat dry milk and hard cheese was $1.13 lower than the price that would have prevailed for such uses under the new pricing arrangement. Price differences would exist also for Class I products because of the use of different butterfat differentials.

There is substantial competition among handlers regulated by the North Texas and South Texas orders. In September 1973, for example, nearly 26.6 million pounds of fluid milk products were distributed in the South Texas marketing area from 11 North Texas pool plants. In this circumstance, the differences in the present classification and pricing of milk under the South Texas order relative to the new classification plan for the North Texas order would be disruptive to the competitive relationships of handlers and to the orderly marketing of producer milk. This would be particularly so for the handler who is now regulated under the South Texas order because the majority of his Class I sales are in that market but whose distributing plant, nevertheless, is located in the center of the North Texas market where he also has sales. This handler stressed that his competitive situation makes it particularly necessary that the new classification plan be adopted in the South Texas market concurrently with the implementation of similar plans for the other Texas markets.

For these reasons, classification and pricing changes similar to those determined appropriate for the other Texas orders should be made in the South Texas order. Such changes should be effectuated concurrently with the changes in the other orders. Although the cooperative association proposing the six-order merger urged that the plan be modified in several respects for the merged order, it indicated that the South Texas classification plan should coincide with the classification provisions of the other Texas orders during any interim period preceding a merger.

In view of the broad industry participation in the development of a uniform classification plan for the 39 markets, and because of the comprehensive review of this issue at two regional hearings, proponents of the South Texas order changes did not present extensive testimony at the Texas hearing concerning the details of the new plan. Proponents contended that the uniform plan developed for the other markets was equally appropriate for the South Texas market and that a full reconsideration at this hearing of all the order changes encompassed by the new plan, and the supporting reasons for such changes, was unnecessary.

The new classification plan that evolved from the 39-market proceedings reflects the combined efforts of both producers and handlers throughout much of the milk industry to develop a uniform plan for classifying milk for pricing purposes. Prior to the first of two regional hearings on uniform classification provisions, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under milk orders generally. Guidelines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings. Using these guidelines as a basis for their proposals, several cooperative associations petitioned the Department for hearings on proposals relating to the classification and pricing of milk under 39 present orders, including all orders in Texas except the South Texas order. While differing on some of the provisions proposed by producers, a uniform classification plan for the 39 orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members were operating in each of the markets under consideration.

Following extensive hearings for 7 markets and then 32 markets and subsequent recommended decisions, revised recommended decisions were issued for both proceedings on the basis of industry exceptions to the initial recommendations. The industry was then provided a further opportunity to participate in these rule-making proceedings through the filing of exceptions to the revised recommendations concerning a new classification plan. Moreover, many of the parties that have a direct interest in the marketing of milk in the South Texas area participated in the development of the new classification plan for the 39 markets, and particularly with respect to the application of the new plan to the Texas orders that were under consideration.

Accordingly, the description and justification set forth herein concerning the detailed provisions of the proposed South Texas classification plan are patterned on the findings and conclusions of the 32-market decision applicable to the other Texas orders.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk under the 39 orders, a uniform format of order provisions also was developed. Orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price is to be computed. However, many orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

It has been determined that coordination of the 39 orders in this respect would be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time made the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

For these same reasons, the new format of order provisions adopted for the other orders likewise should be adopted for the South Texas order.

The South Texas order is set forth in its entirety at the end of this document. The order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting the order to the new format, no substantive changes have been made in those provisions not closely related to the classification issue. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in the order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the order that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

(a) *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under the South Texas order should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include, however, skim milk or butterfat disposed of in the form of such fluid products as evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, those containing by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the order as a "fluid milk product."[2]

Class I milk also should include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Most of the products listed above for inclusion in Class I are now included in this class. When packaged as sterilized products in hermetically sealed metal or glass containers, however, such products are treated as Class II products. The present order also does not differentiate milkshake mixes for classification purposes on the basis of solids content.

The adopted Class I classification would not include several products now classified in the highest class. These include cream, sour cream, sour cream products and half and half. Since June 1973, sour cream and sour cream products have been treated as Class II products on the basis of orders suspending certain provisions of the South Texas order. The classification of the several cream products is discussed under Issue 5(b).

The order also now includes in Class I packaged fluid milk products in inventory at the end of the month. As discussed under Issue 5(f), such inventories would be classified in a lower class under the revised order.

As indicated, milkshake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class II products.

Milkshake and ice milk mixes are generally marketed through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through food stores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class II.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milkshake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under this order, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes that are sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used.

A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

No exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products ars disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same customers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form may be marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products are now excluded from the Class I classification and such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

The present basis for defining a "fluid milk product" should be modified. The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement.

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid mlik product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids, including both milk solids and non-milk solids. The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages

[2] The reader should keep in mind that the order does not classify products per se but rather the skim milk and butterfat disposed of in the form of a particular product or used to produce a particular product. To simplify the presentation of the findings and conclusions, however, reference is made in this decision to Class I products, Class II products and Class III products, or to certain products included in a particular class.

represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are chosen so as to conform as closely as possible to the water, solids and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product in fluid form falls within the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form, not to the composition of the product on a skim equivalent basis. A new product not intended for beverage use might contain in its finished form somewhat more than the maximum total solids specified for a fluid milk product under the adopted composition standards. On this basis, the product would not fall within the fluid milk product definition. Application of the composition standards to this product on a skim equivalent basis, however, could result in the product meeting such standards and thus being defined as a fluid milk product.

Applying the composition standards to products in the form in which marketed could exclude from the fluid milk product definition a new concentrated fluid product that is intended to be consumed as a beverage only after reconstitution. For the present time, however, the composition standards should be applied to a product in its finished form. A refinement of such standards may be appropriate once there has been an opportunity to evaluate their applicability under actual market conditions.

It should be noted that under the adopted classification provisions accounting for a new product on other than a skim equivalent basis would be limited solely to determining whether or not the product meets the composition standards of the fluid milk product definition. For all other purposes under the order, the product would be accounted for on a skim equivalent basis.

In applying the 6.5 percent nonfat milk solids standard, it is intended that this standard apply to such solids in any form except sodium caseinate. As set forth in the "filled milk" decision applicable to this and other orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[3] There is no basis for changing the procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as might be contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered.

(b) *Classification and pricing of milk not needed for Class I use.* Two use classes, Class II and Class III, should be provided for skim milk and butterfat utilized for other than Class I purposes. The Class II price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the month plus 10 cents. The price for Class III milk should be the basic formula price for the month.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, low fat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form (unless used in a Class III product), plastic cream, frozen cream, anhydrous milkfat, custards, puddings, pancake mixes, and formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

A Class II classification should apply also to bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages.

Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, low fat cottage cheese and dry curd cottage cheese), butter, any milk product in dry form, any concentrated milk product in bulk fluid form that is used to produce a Class III product, evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any product not otherwise specified as a Class I, Class II or Class III product.

Other Class III uses should include bulk and packaged fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in Class I. Class III should include any fluid milk product or Class II product accounted for on a "disposed of" basis that is used for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

Under the present South Texas order, skim milk and butterfat utilized for other than Class I purposes is classified in a single class, Class II. The Class II price is the Minnesota-Wisconsin manufacturing milk price (basic formula price) for the month, but not to exceed by more than 10 cents a butter-nonfat dry milk formula price. The product formula price is computed by adding together the values determined by (1) multiplying the average monthly price of Grade A bulk butter at Chicago, less 3 cents, by 4.2 and (2) multiplying the average monthly price of spray process nonfat dry milk in the Chicago area, less 5.5 cents, by 8.5 and then by 0.965.

Before discussing the basis for establishing a new intermediate price class, consideration should be given to the appropriate Class III price under the revised classification plan. This is necessary since the price level for Class III milk bears on what the Class II price should be.

The purpose of adopting a revised classification plan for the South Texas order strongly suggests that the Class III price should be the same as that determined appropriate for the other Texas orders. In developing a uniform classification plan for use among orders generally, producers and handlers alike urged that a particular product be classified in each market in the same class. Although the various parties were not in agreement on the classification scheme that should be adopted, the common purpose of their proposals was the resolution of the many differences among orders in the classification of milk. It was the general consensus that with the burgeoning intermarket sales of various milk products over increasingly wider areas, these differences in classification have been causing undue competitive inequities among handlers in various markets seeking the same outlets for milk.

Any attempt to resolve these competitive inequities through the adoption of a uniform classification plan cannot be

[3] Official notice is taken of the Assistant Secretary's decision issued on October 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

divorced from consideration of the prices to be applicable to each class. The classification of milk does nothing more than determine what uses of milk are to be subject to different levels of price. The equity benefits to handlers of using the same classification plan in all markets can be fully realized only if the price for each class is uniform (except for appropriate location adjustments) in all markets.

On the basis of the classification proceedings for 39 markets, including most of the Texas markets, it has been determined that the Minnesota-Wisconsin price should be the Class III price in these markets. Thus, the continued use of the present South Texas Class III price formula, which includes the butter-nonfat dry milk formula price as a Class III price determinant, would nullify much of the intended effectiveness of classifying a particular product in the same class in each market.

In considering the appropriate mechanism for determining the Class III price, it is consistent with the purposes of the statute authorizing milk orders that reserve milk supplies be priced at the highest practicable level compatible with orderly disposal of the milk. Excess market supplies normally must be channeled into manufactured products that compete on a national basis with similar products made from ungraded milk. It is important, therefore, that the price for surplus milk in the regulated market be in close alignment with prices being paid by processors of manufacturing grade milk.

The Minnesota-Wisconsin price is a representative pay price for about half of the manufacturing grade milk in the United States. This price reflects a farm price level determined by competitive conditions that are affected by the demand for all major manufactured dairy products, it also reflects the supply and demand of such products within a highly coordinated marketing system, which is national in scope. Use of the Minnesota-Wisconsin price as the Class III price will result in order prices for surplus milk that are in close alignment with the dominant price structure for raw milk within the manufacturing milk segment of the dairy industry.

Certain uses of producer milk not needed for Class I purposes should be priced at a somewhat higher level than that applicable to milk in the adopted Class III uses. These higher-valued uses, to be included in the Class II classification, were set forth at the beginning of this discussion on pricing surplus milk. The Class II price should be the Minnesota-Wisconsin price plus 10 cents, the same price determined to be appropriate for Class II milk under the 39 orders mentioned earlier.

Of the products adopted herein for inclusion in Class II, the two usually of principal importance on a volume basis are frozen desserts and cottage cheese. For this discussion the term "cottage cheese" encompasses cottage cheese (i.e., creamed cottage cheese), lowfat cottage cheese, and dry curd cottage cheese.

There are several distinguishing production characteristics for cottage cheese and frozen desserts that support a higher price for milk in these proposed Class II uses than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of Class II products made and the amount of reserve milk in a market, as is the case with respect to butter and nonfat dry milk, for instance. The demand for these "soft" products is related closely to the current consumer demand for such products. Unlike the "hard" manufactured products, cottage cheese and frozen desserts have a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers normally want adequate supplies of fresh, high-quality producer milk to be made available at their plants at all times for these Class II uses.

Frozen dessert and cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture.

The marketing situation for other proposed Class II uses, such as eggnog, yogurt, custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors, is essentially the same as for cottage cheese and frozen desserts.

The adopted Class II price (the Minnesota-Wisconsin price plus 10 cents) is a reflection of some of the additional value which producer milk used in these several proposed Class II uses has to regulated handlers. Although local producers represent the regular source of milk for such uses, a handler may choose to use milk from some other source. Such milk could not be obtained on a regular basis, however, at less than the cost of producer milk under the adopted pricing scheme.

It is recognized that an individual handler may find at times that producer milk does not represent the cheapest source of milk for his Class II uses. Presumably the alternative source would be concentrated forms of milk since health regulations would not permit the receipt of ungraded supplies of whole milk at a pool distributing plant, and graded supplies would not be available on a regular basis at less than the Class II price.

Under the revised allocation provisions adopted herein, receipts of nonfluid other source milk such as condensed skim milk or nonfat dry milk that are used in a Class II product would be allocated directly to the handler's Class II uses, with no obligation applying under the order to such milk. Under this arrangement, the handler could choose to use the other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk. The handler thus could rely upon whichever source of milk best fits his competitive and operational circumstances.

Rather than produce his own Class II products a handler might choose to purchase the products from some other source. There is no indication, however, that under the adopted pricing, and with similar pricing in nearby regulated markets, such a handler could enhance his competitive position relative to handlers using producer milk. Moreover, the cost of transporting the proposed Class II products from some distant area where a lower product cost might prevail to outlets in the South Texas market would generally negate any seeming price advantage attributable to differences in applicable prices.

Classifying in Class II the several types of cream items, some of which are now in Class I while others are in Class II, will accommodate the industry's desire for a lower price for milk used in cream products and at the same time price at the same level a variety of products that compete with each other. Half and half, whether sterilized or unsterilized, and light cream are used principally by consumers in coffee. Aerated cream and sterilized and unsterilized whipping cream are used as dessert toppings. Both graded and ungraded sour cream and sour mixtures are used by consumers for similar purposes. The same classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for essentially similar uses.

Although the present Class I cream products sold in the South Texas market must be made from inspected milk, which is delivered regularly by producers to distributing plants, it is the position of producers that milk sold in the form of such products should no longer be subject to the Class I price. Relative to the total Class I sales of producer milk, cream products generally represent only a very small percentage of the Class I market. Thus, this classification change will have relatively little effect in total on the returns to producers.

In connection with the reclassification of cream products, it is desirable to define a new term—"fluid cream product". "Fluid cream product" would mean cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

With the reclassification of cream, movements of cream to or from a plant no longer should be considered in determining whether a plant meets the pooling requirements of the order.

The order now provides that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be in the surplus price class. With the establishment of an intermediate price class, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be included in this class. The substitution of nonmilk fat for milk fat in a product

merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Condensed milk or skim milk in bulk, plastic cream, frozen cream and anhydrous milk fat are "intermediate" products that also should be included in Class II. These products are not end uses in themselves but instead are used in making other products, including frozen desserts and food products such as candy and soup. Under the classification adopted herein, frozen desserts and food products are Class II uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class II level.

Recognition should be given, however, to the possible use of condensed milk or skim milk in making a Class III product. Such products may be processed at times into dried products, which would be a Class III use under the revised classification plan. In this case, the milk used to produce the condensed product should be classified as Class III milk.

Such classification requires, of course, that the condensed product be followed to its ultimate use. Presumably, the final disposition of the condensed product can be easily ascertained when it is moved to a plant containing only drying facilities. Should the condensed product be moved to a plant having mixed processing operations and receipts of condensed milk from different sources, ascertainment of the ultimate use of the condensed product in question may be difficult, if not impossible. To the extent that it can be satisfactorily determined that the ultimate use of the "intermediate" condensed product was in a Class III product, the lowest classification should apply to the producer milk used in the condensed product.

(c) *Other source milk definition.* Because of the revised classification plan, certain changes in the present other source milk definition are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk. Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of the order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk also should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk. Thus, no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products.

The order should provide that products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other source milk. A typical processing operation would be for a handler to make condensed skim milk from producer milk and then use the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

It is recognized that there might be some difficulty in determining the source of the condensed skim milk that is reprocessed in the plant should a handler use during the month condensed skim milk not only from his current condensing operation but perhaps from inventory held over from the previous month or purchases from another plant. If this situation arises, the condensed skim milk produced in the plant during the current month should be considered as having been reprocessed first before any condensed skim milk from other sources.

(d) *Accounting for nonfat milk solids added to milk and milk products.* Certain changes should be made in the present method of classifying the skim milk equivalent of nonfat milk solids added to certain products.

Currently, the order provides that a modified fluid milk product shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat milk solids in such product is classified in the lowest class. This procedure should be continued in the case of those products that would be defined as fluid milk products.

Under the new classification plan, cream products now defined as fluid milk products would be included instead in Class II. Because it is not intended that Class II outlets be protected in any way for producers, there is not the same economic basis for classifying modified Class II products in the manner just described. Accordingly, the order should provide in the case of modified Class II products, such as half and half and light cream, that the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under the allocation procedure.

(e) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of the order that prescribe the classification of fluid milk products transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

The order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental agency plant. To determine such classification, the nonpool plants' utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from

pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plan from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class II utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Certain changes should be made in the order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of maintaining reserve supplies for the Class I sales of producer-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

The order also should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. This classification now applies only with respect to such transfers made on an intramarket basis.

Under orders generally, producer-handlers, in their capacity as handlers, have been exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order requires a Class I classification of all fluid milk products that are transferred from a pool plant to a producer-handler as defined under that particular order. Inasmuch as the producer-handler exemption under each order is predicated on essentially the same basis, a Class I classification of milk transferred from a pool plant regulated under the South Texas order to a producer-handler as defined under another order would be in keeping with the general basis for producer-handler exemption.

In addition to the Class I classification of all fluid milk products transferred from a pool plant to a producer-handler, the South Texas order provides for a similar classification of all fluid milk products transferred to a governmental agency plant. Such plants are exempt from the pooling and pricing provisions of the order in much the same manner as producer-handlers. It is appropriate, therefore, that the adopted method for classifying bulk fluid cream products transferred to a producer-handler likewise apply to transfers of bulk fluid cream products to government-operated plants.

(f) *Classification of end-of-month inventory.* Under the revised classification plan, fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Such inventory should be subject in the following month to reclassification in a higher class. Ending inventory of fluid cream products, eggnog and yogurt, when held in bulk form, likewise should be classified in Class III and subject to reclassification. Such products held in packaged form at the end of the month should be classified as Class II milk.

Presently, the South Texas order classifies all ending inventories of fluid milk products in bulk form in the lowest class. A Class I classification applies to such inventories in packaged form. In the latter case, a handler's obligation for the Class I inventory is adjusted in the following month by whatever amount the Class I price in such month changes from the Class I price level initially applicable to the inventory. This assures that such inventory is priced on a current basis when disposed of on routes.

In the interest of establishing uniform classification provisions among the Texas orders, the present procedure for classifying end-of-month inventory should be changed to conform with that determined appropriate for the other orders. This will have no consequential impact on the market since either type of inventory classification procedure results over the long run in essentially the same pool obligation for handlers and the same returns to producers. Under the adopted procedure, ending inventories of fluid milk products would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the order to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt, and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. This is necessary since the classification of ending inventory in the month preceding the order changes would differ from the classification of inventory under the new plan.

Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. This allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been classified as Class I milk and priced at the preceding month's Class I price, however, handlers should receive a credit on such packaged inventories equal to the difference between the Class I and Class II prices for

the preceding month. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

Also under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. As just described, an adjustment would be made in the first month under the new plan which would result in such inventories, in effect, having been priced in the preceding month at the Class III price. Therefore, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

(g) *Classification of shrinkage, milk dumped, and milk disposed of for animal feed.* For purposes of uniformity among orders, the South Texas order provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage should conform to those determined appropriate for the other Texas orders. This will not result in any significant classification changes.

As at present, shrinkage would continue to be classified under the new three-class system in the lowest class (subject as now to certain limitations). Also, dumpage and animal feed dispositions would continue to be included in the lowest class. The products covered by the dumpage and animal feed provisions would be limited to fluid milk products, fluid cream products, eggnog, yogurt and similar filled products. Because of their relatively limited shelf life, it is these products that are commonly found in route returns and for which handlers realize little, if any, monetary value. Such provisions also would apply to skim milk being used in the manufacture of cottage cheese but which must be dumped because of a failure in the culturing process.

(h) *Allocation of receipts to utilization.* In adopting a revised classification plan for the South Texas order, conforming changes must be made in the provisions that prescribe ho wa handler's provisions that prescribe how a handler's allocated to his utilization for the purpose of classifying producer milk. Since the order now provides for only two classes of utilization, changes are necessary to provide for the allocation of receipts to three classes. Also, the order must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present order, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handlers' Class I sales.

In conjunction with the revised classification plan, however handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II product that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk to any greater extent than presently for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the order.

In this connection, it should be noted that under the revised classification plan the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The allocation procedure now used for handlers who operate two or more pool plants regulated under the South Texas order should be modified somewhat to conform with the procedure determined appropriate for other orders. The order should provide that for purposes of allocating a multiple-plant handler's receipts to his utilization, the operations at each of his pool plants shall be considered separately. As is the case now, however, those receipts of other source milk from unregulated supply plants and other Federal order plants eligible to share with producer milk in a handler's Class I utilization should be allocated on the basis of the handler's total plant system. This procedure is quite similar to that used under the present order. The order now requires, however, that if there are receipts of other source milk at any one of the plants that are to be prorated with producer milk to the plant's Class I utilization, all allocations of the handler's receipts to his utilization shall be done on the basis of his total system.

Conditions in the South Texas market do not require the use of an allocation procedure that differs from the procedure used in other Texas markets. Handlers may be subject at different times to the regulatory provisions of different orders. Applying the allocation provisions uniformly among all orders will reduce unnecessary regulatory differences that may be experienced by these handlers. There would be little, if any, change in a handler's total obligation under the order, or in producer returns, from applying the adopted allocation procedure in this market.

As indicated, the order now provides that certain receipts of milk from unregulated supply plants and other Federal order plants shall share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. This procedure, which resulted from the so-called "compensatory payment" decisions issued in 1964 and which was included in the South Texas order when it was later promulgated, should be continued.[5] To implement this procedure, several additional allocation steps must be provided in this order.

The additional allocation steps establish a procedure whereby the milk from unregulated supply plants and other order plants will continue to be classified on the basis of the handler's total system, but will be assigned to classes at

the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of the other pool plants in this system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

(i) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions should be changed, however, to reflect the new categories of information that the market administrator will need in administering the order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

As proposed herein, the reporting provisions would be stated in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

(j) *Changing the butterfat differentials.* A single butterfat differential should apply under the order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent. The Chicago butter price, now used under the order, is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture.

Various butterfat differentials are now provided by the South Texas order for adjusting Class I, Class II and uniform prices. The Class I butterfat differential is computed by multiplying the Chicago butter price for the preceding month by 0.125. The Class II differential is based on the butter price for the current month times a factor of 0.115. The butterfat differential used in adjusting the uniform price to producers is the average of the butterfat differentials for each class weighted by the proportion of producer butterfat in each class.

[6] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 F.R. 9002, 9110, and 9213) with respect to all milk orders then in effect.

Use of the single butterfat differential adopted herein will coordinate the pricing of milk under the South Texas order with such pricing under the other Texas orders. Unless a common butterfat differential is used, there would not be the complete uniformity in pricing among orders that is intended under a uniform classification plan.

Under the concept that all class prices should be adjusted by the same butterfat differential, it is necessary that the order provide only for a producer butterfat differential. No handler butterfat differentials for adjusting class prices need be set forth as such in the order, nor is there any need to pool the value of butterfat in each class. All producer "differential" butterfat received by handlers would be priced the same to all handlers regardless of the class in which the butterfat is used. There is no reason for handlers to be less aware under this procedure of what the cost of milk is in each class than under the present order provisions. Any adjustment of class prices that a handler may wish to make to reflect a certain butterfat content can be done merely by using the butterfat differential used to adjust pay prices to producers.

(k) *Uniform equivalent price provisions.* The "equivalent price" provision of the order should be changed to conform with the equivalent price provision determined appropriate for the other Texas orders. This will further assure uniformity of prices among the several orders.

An equivalent price provision is necessary to provide a price, or price constituent, in cases where published prices, quotations or other pricing constituents as may be prescribed by the order are not available.

If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differential could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the butterfat differential, as well as the basic formula price and class prices, is not interrupted by the contingencies cited.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination has to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in the order should be stated as follows:

"If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required."

6. *Need for omitting the recommended decision.* The timely execution of the function of the Secretary concerning Issue 5 does not require the omission of a recommended decision and opportunity for exceptions thereto.

Proponents of the revised classification plan for the South Texas order urged that the recommended decision be omitted to assure that such plan could be made effective concurrently with the effectuation of similar plans for the other Texas markets. Final action on the proposed amendments for the other Texas orders, however, has not yet been taken, and no date when such amendments, if issued, would become effective has been announced. It is concluded that the issuance of a recommended decision on the South Texas classification issue will not prevent the amendment of all the Texas orders at the same time.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling

of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the South Texas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1121—MILK IN SOUTH TEXAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1121.1 General provisions.

DEFINITIONS

1121.2 South Texas marketing area.
1121.3 Route disposition.
1121.4 Plant.
1121.5 Distributing plant.
1121.6 Supply plant.
1121.7 Pool plant.
1121.8 Nonpool plant.
1121.9 Handler.
1121.10 Producer-handler.
1121.11 [Reserved]
1121.12 Producer.
1121.13 Producer milk.
1121.14 Other source milk.
1121.15 Fluid milk product.
1121.16 Fluid cream product.
1121.17 Filled milk.
1121.18 Cooperative association.

HANDLER REPORTS

1121.30 Reports of receipts and utilization.
1121.31 Payroll reports.
1121.32 Other reports.

CLASSIFICATION OF MILK

1121.40 Classes of utilization.
1121.41 Shrinkage.
1121.42 Classification of transfers and diversions.
1121.43 General classification rules.
1121.44 Classification of producer milk.
1121.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1121.50 Class prices.
1121.51 Basic formula price.
1121.52 Plant location adjustments for handlers.
1121.53 Announcement of class prices.
1121.54 Equivalent price.

UNIFORM PRICE

Sec.

1121.60 Handler's value of milk for computing uniform price.
1121.61 Computation of uniform price.
1121.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1121.70 Producer-settlement fund.
1121.71 Payments to the producer-settlement fund.
1121.72 Payments from the producer-settlement fund.
1121.73 Payments to producers and to cooperative associations.
1121.74 Butterfat differential.
1121.75 Plant location adjustments for producers and on nonpool milk.
1121.76 Payments by handler operating a partially regulated distributing plant.
1121.77 Adjustment of accounts.
1121.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1121.85 Assessment for order administration.
1121.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1121.110 Agency.
1121.111 Composition of Agency.
1121.112 Term of office.
1121.113 Selection of Agency members.
1121.114 Agency operating procedure.
1121.115 Powers of the Agency.
1121.116 Duties of the Agency.
1121.117 Advertising, Research, Education and Promotion Program.
1121.118 Limitation of expenditures by the Agency.
1121.119 Personal liability.
1121.120 Procedure for requesting refunds.
1121.121 Duties of the market administrator.
1121.122 Liquidation.

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1121.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1121.2 South Texas marketing area.

"South Texas marketing area", hereinafter called the "marketing area", means all territory, including all piers, docks, and wharves connected therewith, and all craft moored thereat, and territory occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments, within the boundaries of the following counties, all in the State of Texas:

Angelina.
Austin.
Brazoria.
Brazos.
Chambers.
Colorado.
Fort Bend.
Galveston.
Grimes.
Hardin.
Harris.
Houston.
Jackson.
Jasper.
Jefferson.
Liberty.
Madison.
Matagorda.
Montgomery.
Nacogdoches.
Newton.
Orange.
Polk.
San Jacinto.
Trinity.
Tyler.
Walker.
Waller.
Washington.
Wharton.

§ 1121.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of fluid milk products classified as Class I milk, other than a delivery to a plant.

§ 1121.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1121.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to any agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which there is route disposition of fluid milk products in the marketing area.

§ 1121.6 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which fluid milk products are moved to a distributing plant.

§ 1121.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A milk at such plant; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of the receipts of Grade A milk at such plant.

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers pursuant to § 1121.9(c) at such plant is moved as fluid milk products, except filled milk, in bulk to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to paragraph (b)(1) of this section during each of the immediately preceding months of September through December, unless the operator of such plant had filed with the market administrator before the first day of any month a written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant.

(c) Any plant operated by a cooperative association which has been approved by any duly constituted State or municipal health authority and at which milk is received from dairy farmers

holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(4) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order, and either qualifies as a fully regulated distributing plant under such other Federal order subject to paragraph (d) (3) and (4) of this section, or from such plant greater qualifying shipments are made as a supply plant during the month to plants regulated under such other order than are made to plants regulated under this part, except that this subparagraph shall not apply during the months of January through August if such plant retains automatic pooling status under this part pursuant to paragraph (b) (2) of this section.

§ 1121.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant, a governmental agency plant, nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a governmental agency plant, nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units (other than to pool plants) in the marketing area during the month.

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1121.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1121.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to, such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant from which there is route disposition in the marketing area.

§ 1121.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk;

(d) Receives from pool plants not more than a total of 5,000 pounds of fluid milk products during the month or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1121.11 [Reserved]

§ 1121.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority which is:

(1) Received at a pool plant; or

(2) Diverted by a handler for his account pursuant to the provisions of § 1121.13.

(b) "Producer" shall not include:

(1) A governmental agency which operates a plant exempt pursuant to § 1121.8(e);

(2) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1121.44(a)(8)(iii) and the corresponding step of § 1121.44(b); and

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1121.13 Producer milk.

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a handler described in § 1121.9(c); and

(3) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant nor a governmental agency plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant that is not a producer-handler plant nor a governmental agency plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; and

(2) Received by such cooperative association from producers' farms as a handler described in § 1121.9(c) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such

quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (c)(1) of this section, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler and;

(3) For the purposes of location adjustments pursuant to §§ 1121.52 and 1121.75, diverted milk shall be priced at the location of the nonpool plant to which diverted.

§ 1121.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1121.40(b)(1) from any source other than producers, handlers described in § 1121.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1121.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1121.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1121.40(b)(1)) for which the handler fails to establish a disposition.

§ 1121.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package) or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1121.40 (b) or (c)(1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1121.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1121.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1121.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1121.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1121.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1121.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1121.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1121.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1121.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1121.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1121.32 Other reports.

(a) Each handler who causes milk to be diverted for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section §§ 1121.30 and 1121.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1121.40 Classes of utilization.

Except as provided in § 1121.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1121.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1121.15; and

(6) In shrinkage assigned pursuant to § 1121.41(a) to the receipts specified in § 1121.41(a)(2) and in shrinkage specified in § 1121.41 (b) and (c).

§ 1121.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1121.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1121.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1121.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1121.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1121.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1121.44(a)(12) and the corresponding step of § 1121.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1121.44(a)(7) or the corresponding step of § 1121.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1121.44(a)(11) or (12) or the corresponding steps of § 1121.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream

product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1121.40.

(c) *Transfers to producer-handlers and governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a fluild milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluild cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a governmental agency plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1121.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for vertification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plan and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transfereeplant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1121.43 General classification rules.

In determining the classification of producer milk pursuant to § 1121.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1121.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1121.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1121.40, 1121.41, and 1121.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1121.9 (b)

or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1121.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1121.9(a) for each of his pool plants separately and of each handler described in § 1121.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1121.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1121.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1121.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1121.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1121.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1121.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the

handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be substracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1121.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1121.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1121.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1121.44 (a) (12) and the corresponding step of § 1121.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1121.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1121.50 Class prices.

Subject to the provisions of § 1121.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.68.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1121.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1121.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant located (1) in Fayette County, Tex., or (2) north of U.S. Highway 90 and 60 miles or more from the nearer of the city halls in Beaumont and Houston, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk subject to the limitations of paragraph (c) of this section, the price specified in § 1121.50(a) shall be reduced 1.5 cents per 10 miles of distance or fraction thereof that such plant is located from the Houston city hall by shortest hard-surfaced highway distance as determined by the market administrator: *Provided,* That the location adjustment at a plant located in Gregg, Harrison, or Smith Counties, Tex., shall be minus 30 cents and that the location adjustment pursuant to this paragraph for any plant located in Zone I as defined in the North Texas order, Part 1126, shall not result in a price less than the applicable Class I price at such plant location pursuant to the North Texas order.

(b) For that milk which is received from producers at a pool plant which is beyond 60 miles from the nearer of the city halls in Beaumont and Houston, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and south of the northern boundaries of the Texas counties of Matagorda, Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit and which is classified as Class I milk subject to the limitations of paragraph (c) of this section, the price specified in § 1121.50(a) shall be increased by any amount by which such price is less than the applicable Class I price at the same location pursuant to Part 1130 regulating the handling of milk in the Corpus Christi marketing area.

(c) For purposes of calculating such location adjustments, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of receipts at such plant from producers and handlers described in § 1121.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price, and then in sequence to plants having a lower Class I price beginning with the plant at which the highest Class I price would apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1121.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1121.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1121.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1121.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1121.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1121.44(a)(14) and the corresponding step of § 1121.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1121.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundred-weight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1121.44 (a)(9) and the corresponding step of § 1121.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1121.44(a)(7) (i) through (iv) and the corresponding step of § 1121.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1121.44(a)(7) (v) and (vi) and the corresponding step of § 1121.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1121.44(a)(11) and the corresponding step of § 1121.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1121.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1121.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1121.60 for all handlers who have made the reports prescribed in § 1121.30 for the month and who have made the payments required pursuant to § 1121.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Add the aggregate of the values of the minus location adjustments pursuant to § 1121.75, and subtract the aggregate of the values of the plus location adjustments pursuant to § 1121.75;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1121.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1121.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1121.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into

which he shall deposit all payments made by handlers pursuant to §§ 1121.71, 1121.76, and 1121.77, subject to the provisions of § 1121.78, and from which he shall make all payments to handlers pursuant to §§ 1121.72 and 1121.77.

§ 1121.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1121.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1121.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1121.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1121.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1121.71(a)(2) exceeds the amount computed pursuant to § 1121.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due to a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler pursuant to §§ 1121.71, 1121.77, 1121.78, 1121.85, and 1121.86.

§ 1121.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1121.61, as adjusted pursuant to §§ 1121.74 and 1121.75, and less the amount of payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment for such month pursuant to § 1121.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section, and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1121.31.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1121.9(c):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price, as adjusted pursuant to §§ 1121.74 and 1121.75, less the amount of payment made pursuant to paragraph (d)(1) of this section.

(e) On or before the 13th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk as classified pursuant to § 1121.42(a) at the respective class prices, as adjusted by the butterfat differential specified in § 1121.74, that are applicable at the location of the transferee-handler's pool plant.

§ 1121.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1121.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1121.73, the uniform price computed pursuant to § 1121.61 to be paid for such milk received at a pool plant at which a location adjustment pursuant to § 1121.52 (a) or (b) applies will be subject to a location adjustment (plus or minus) equal to that specified in such section.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1121.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1121.30(b) and 1121.31 (b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1121.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1121.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1121.60 for such handler shall include, in lieu of the value of other source milk specified in § 1121.60(f) less the value of such other source milk specified in § 1121.71(a)(2)(ii), a value of milk determined pursuant to § 1121.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1121.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1121.30(b) and 1121.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1121.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1121.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1121.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1121.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1121.78 Changes on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1121.71, 1121.76, 1121.77, 1121.85, or 1121.86 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due: Provided, that—

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section any unpaid obligation that was determined at a date later than that previously prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1121.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that described in § 1121.13(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1121.44(a)(7) and (11) and the corresponding steps of § 1121.44(b), except such other source milk that is excluded from the computations pursuant to § 1121.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1121.76(a)(2).

§ 1121.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1121.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such monies shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such

producers and on or before the 15th day after the end of such month pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1121.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1121.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, and educational and other programs designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall sreve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1121.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1121.113(b), is authorized one Agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1121.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one Agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one Agency representative. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1121.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the Agency representatives.

§ 1121.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1121.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative, who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1121.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order and annually thereafter the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives as the case may be and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1121.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1121.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1121.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1121.110 and 1121.117.

§ 1121.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1121.110 and 1121.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(f) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(g) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1121.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1121.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1121.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or

for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milks and its products.

§ 1121.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of wilful misconduct, gross negligence, or those which are criminal in nature.

§ 1121.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1121.121 Duties of the market administrator.

Except as specified in § 1121.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1121.113(c).

(b) Set aside the amounts subtracted under § 1121.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1121.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1121.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1121.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b) (2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1121.110 through 1121.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1121.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1121.70.

Signed at Washington, D.C. on: March 21, 1974.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.74-6941 Filed 3-26-74;8:45 am]

Animal and Plant Health Inspection Service

[9 CFR Part 92]

IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Proposed Requirements for Use of Import Quarantine Facilities

Statement of considerations. The purpose of this proposed amendment is to include provisions in the regulations which will insure receipt of funds due the Department for services rendered while animals offered for entry are in quarantine.

The proposed amendment would require: (1) That the importer arrange for transportation of shipments from the port of arrival to the quarantine facility; (2) that the use of non-Federal quarantine facilities be approved by the Deputy Administrator prior to the issuance of the required import permit; (3) that requests for inspection and other services be made in writing, and that a waiver of all claims against the United States and Veterinary Services or any employee of Veterinary Services for damages which may arise be signed by the importer; (4) that payment for services received by the importer at rates prescribed by the Deputy Administrator be made by certified check or money order prior to release of the animals from quarantine; and (5) would provide that the Deputy Administrator may refuse entry or otherwise dispose of animals when the importer fails to pay for services received. Such animals may be sold at public sale after completion of the quarantine period to recover payment for services received while in quarantine, proceeds of sale in excess of funds due the Federal Government to be held in a special deposit account for a period of six months pending claim by the owner.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to section 6 of the Act of August 30, 1890, as amended, section 2 of the Act of February 2, 1903, as amended, and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 104, 111, 134a, 134b, 134c, and 134f), the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations.

§ 92.12 would be amended to read:

§ 92.12 Feed and attendants for animals in quarantine.

(a) *Ports where quarantine facilities not maintained by veterinary services.* The importer, or his agent, of animals subject to quarantine under the regulations in this part shall arrange for acceptable transportation to the non-Governmental quarantine facility and for the care, feed, and handling of the animals from the time of unloading at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Deputy Administrator, Veterinary Services. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; Veterinary Services assumes no responsibility with respect thereto. The quarantine facility must be suitable for the quarantine of such animals and must be approved by the Deputy Administrator, Veterinary Services prior to the issuance of any import permit. The facilities occupied by animals should be kept clean and sanitary to the satisfaction of the inspector assigned to supervise the quarantine. If for any cause the care, feed, or handling of animals, or the

sanitation of the facilities, is neglected, in the opinion of the inspector assigned to supervise the quarantine, such services may be furnished by Veterinary Services in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section, and/or the animals may be disposed of as the Deputy Administrator, Veterinary Services, may direct, including sale in accordance with the procedure described in paragraph (b) of this section. The importer, or his agent, shall request in writing such inspection and other services as may be required, and shall waive all claim against the United States and Veterinary Services or any employee of Veterinary Services for damages which may arise from such services. The Deputy Administrator, Veterinary Services, may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his agent, shall be so advised in writing and shall pay for such additional quarantine and other services required. Payment for all services received by the importer, or his agent, in connection with each separate lot of animals shall be made by certified check or U.S. money order prior to release of the animals. If such payment is not made, the animals may be sold in accordance with the procedure described in paragraph (b) of this section, or otherwise disposed of as directed by the Deputy Administrator, Veterinary Services.

(b) *Ports where quarantine facilities maintained by veterinary services.* The importer, or his agent, of animals subject to quarantine under the regulations in this part shall arrange for acceptable transportation to the quarantine facility, and for the care, feed, and handling of the animals from the time they arrive at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Deputy Administrator, Veterinary Services. The importer or his agent shall request in writing such inspection and other services as may be required, and shall waive all claim against the United States and Veterinary Services or any employee of Veterinary Services, for damages which may arise from such services. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; Veterinary Services assumes no responsibility with respect thereto. The Deputy Administrator, Veterinary Services may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his agent, shall be so advised in writing and shall pay for such additional quarantine and other services required. Payment for services received by the importer, or his agent, in connection with each separate lot of animals shall be made by certified check or U.S. money order prior to release of the animals. If such payment is not made, the animals may be sold in accordance with the procedure described in this paragraph or otherwise disposed of as directed by the Deputy Administrator, Veterinary Services. When payment is not made and the animals are to be sold to recover payment for services received, the importer, or his agent, will be notified by the inspector that if said charges are not immediately paid or satisfactory arrangements made for payment, the animals will be sold at public sale to pay the expense of care, feed, and handling during that period. The sale will be held after the expiration of the quarantine period, at such time and place as may be designated by the General Services Administration or other designated selling agent. The proceeds of the sale, after deducting the charges for care, feed, and handling of the animals and other expenses, including the expense of the sale, shall be held in a Special Deposit Account in the United States Treasury for 6 months from the date of sale. If not claimed by the importer, or his agent, within 6 months from the date of sale, the amount so held shall be transferred from the Special Deposit Account to the General Fund Account in the United States Treasury.

(c) Amounts collected from the importer, or his agent, for service rendered shall be deposited so as to be available for defraying the expenses involved in this service.

Any person who wishes to submit written data, views or arguments concerning this proposed amendment may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782 before April 29, 1974.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 870, Hyattsville, Maryland 20782, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of March 1974.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.74-7106 Filed 3-26-74;8:45 am]

Food and Nutrition Service

[7 CFR Parts 210 and 225]

NATIONAL SCHOOL LUNCH PROGRAM; SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

Requirements for Meals

On April 12, 1973, there was published in the FEDERAL REGISTER (38 FR 9234), a notice of proposed rulemaking to amend the regulations governing the operations of the National School Lunch Program (7 CFR Part 210), and the Special Food Service Program for Children (7 CFR Part 225) to authorize use of alternate food components. Included in the notice was an apendix "A" to each regulation part in which the authorized alternates were specified. Three alternate food components were proposed.

Specifications for two of the components, "enriched macaroni products with fortified protein" and "formulated grain-fruit products," are being published in the appendices of the three regulations in final form with minor changes. Specifications for the third alternate food component, "textured vegetable protein products," proposed for use in the National School Lunch Program and Special Food Service Program for Children, are being reissued in proposed form because of substantial specification changes made as a result of public comments received.

These changes to the "textured vegetable protein products" are briefly presented, as follows: the required level of the various nutrients is listed on a per one gram of protein basis; the requirements for folic acid, phosphorous, calcium, zinc, and vitamin A have been included in the nutritional specifications; a minimum protein level of 18 percent has been established for the hydrated products; proteins other than those derived from plants are authorized as ingredients; and a more precise definition of physical structure has been included. Finally, the name of this group of products has been changed from "textured vegetable protein products" to "textured meat alternates."

Comments, suggestions, or objections are invited. In order to be assured of consideration, such comments, suggestions, or objections must be delivered or mailed, postmarked no later than April 26, 1974 to Herbert D. Rorex, Director, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Communications should identify the section and paragraph on which comments, etc., are offered. All written submissions received pursuant to this notice will be made available for public inspection at the Office of the Director, Child Nutrition Division, during the regular business hours 8:30 a.m. to 5 p.m. (7 CFR 1.27(b)).

The following alternate food component is proposed to be authorized under the appendices for the National School Lunch Program and the Special Food Service Program for Children:

APPENDIX A—ALTERNATE FOODS FOR MEALS

TEXTURED MEAT ALTERNATES

1. Schools and service institutions may utilize the textured meat alternates, defined in paragraph 3, as food components in meeting the meal requirements of § 210.10 of the National School Lunch Program regulations, and § 225.9 of the Special Food Service Program for Children regulations, under the following terms and conditions:

(a) A two ounce equivalent combination of hydrated textured meat alternate and meat, poultry or fish may be used to meet the meat or meat alternate requirements

specified in § 210.10 or § 225.9. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Textured meat alternates shall be prepared and served only in combination with meat, poultry or fish.

(c) Combinations of hydrated textured meat alternate, with hydration levels specified in 3(e) with uncooked meat, poultry or fish shall contain at least 70 percent uncooked meat, by weight, and not more than 30 percent, by weight, of hydrated textured meat alternate.

(d) The meat, poultry or fish with which the textured meat alternate is mixed shall be ground and served as meat patties, meat loaves, lasagna, pizza, etc. Meat is defined in USDA Meat Inspection Regulations (9 CFR Part 301.2). Poultry is defined in USDA Poultry Inspection Regulations (9 CFR Part 381.1). Fish is defined as the edible flesh portions of fresh and salt water species of fish.

(e) All textured meat alternates shall bear a label identifying the product as being acceptable to the Department. Labels for the several forms of products that have met the structural integrity test of Category 1 shall conform to the following legend appropriate to their use:

(1) Label for Textured Meat Alternate packaged in dry form. "This is to certify that this product meets USDA–FNS specifications for dry textured meat alternate."

(2) Label for Textured Meat Alternate packaged in hydrated form. "This is to certify that this product meets USDA–FNS specifications for hydrated textured meat alternate."

(3) Label for Textured Meat Alternate products combined with meat. "This ----------[1] product contains ----------[2] percent meat, ----------[2] percent added fat, ----------[2] percent added water, and ----------[2] percent dry ----------[2], that meets USDA–FNS specifications for Textured Meat Alternate." In the blank marked "[1]," insert the name of the meat-combination product in accordance with USDA–APHIS regulations governing labelling of such meat products. In those blanks marked "[2]" list the actual percentages of the several ingredients in descending order of importance, by weight. In the blank marked "[2]," insert the common or usual name of the textured meat alternate products, as "soy flour," "cottonseed flour," etc.

The products that have met the structural integrity test of Category 2 shall be labeled in a similar manner, except that the word "granular" shall be substituted for the word "textured."

(f) Textured meat alternates with tracer materials, such as titanium dioxide, must be labeled to show inclusion of such tracer materials.

(g) Commercially prepared meat/textured meat alternates used in child nutrition programs must meet the requirements set forth in this appendix.

2. Only textured meat alternates which have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(e), above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. Textured meat alternates are foods produced from protein products obtained from plant sources such as food grade oilseeds, or they may be derived from animal protein sources such as dairy products. Protein products from several sources may be mixed in combination to yield an acceptable product. When in dry form, textured meat alternates are to have a minimum of 50 percent protein (Nx6.25) by weight ("as-is" basis). When prepared in hydrated form, they are to have a minimum of 18 percent protein, by weight ("as-is" basis). Textured meat alternates must be mixed with water according to the instruction given in 3(e) and served with ground meat, poultry, or fish. Dry textured meat alternates must have the following characteristics:

(a) *Categories.* Textured meat alternates are classified in two categories according to protein levels. Category 1 products shall contain a minimum of 50 percent protein ("as-is" basis) and include extruded flours and isolate formulations. Category 2 products contain a minimum of 69 percent protein (moisture-free basis) and include granular concentrates and fabricated products. All products may be flavored or unflavored, colored or uncolored, dry or hydrated. The hydrated products may be frozen or unfrozen.

(b) *Physical characteristics.* Textured meat alternates may be in the form of granules, extruded particles, spun fibers, other processed forms, or their mixtures. Textured products of Category 1 are characterized by having structural integrity such that formed units will withstand hydration, retorting, mixing, cooling and other procedures used in preparing the food for consumption. Granular products are characterized by having structural integrity such that they will meet the screen test described for Category 2 products. Structural integrity for the two categories is defined as being able to meet one of the following tests appropriate for the category of products:

Category "1" products

(1) Completely hydrate the dry textured products by adding an excess amount of cold water. Allow to hydrate for one hour during which time there should be a visible layer of water.

(2) Place in a retort, cover particles with water, and cook at 250° F for 30 minutes.

(3) Drain off excess liquid.

(4) Grind the cooked materials in a meat grinder through a ⅛" plate.

(5) Weight out 100 grams of the ground material and spread evenly on an 8" diameter U.S. Std. No. 20 mesh screen.

(6) Spray rinse the material on the screen with cold water for one minute.

(7) Shake off excess water. Calculate the weight of the material remaining on the screen as a percent of the 100 grams.

To qualify as having structural integrity the Category 1 products should have at least 35 percent (35 grams) of the material retained on the screen.

Category "2" products

(1) Place one sample of dry granular product on a U.S. Std. No. 10 mesh screen and shake continuously for one minute. No more than 10 percent, by weight, of the dry product shall be retained.

(2) Place a second sample of dry granular product on a U.S. Std. No. 50 mesh screen and shake continuously for one minute. No more than 5 percent, by weight, of the dry product shall pass through.

(c) *Ingredients.* Textured meat alternates of both categories may be made from protein products derived from a single raw material source or from a mixture of protein products obtained from several different raw material sources. Protein products include both plant-derived flours, protein concentrates or isolates, or animal-derived protein products. Soybeans, cottonseed, peanuts, corn, and wheat are examples of raw material sources of plant-derived proteins. Whey protein concentrates, non-fat dry milk, egg albumin and fish protein concentrates are examples of raw material sources of animal-derived proteins. Acceptable products may contain the following optional ingredients: edible fat or oils, carbohydrates, binders, stabilizers, natural or artificial flavors, colors, and amino acids or their salts, vitamins and minerals. The ingredients deemed suitable for use under this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. All ingredients shall be in conformity with the Federal Food, Drug, and Cosmetic Act, as amended, and all regulations issued thereunder. All ingredients covered by USDA or FDA standards shall comply with requirements of those standards. Labeling of the product shall comply with applicable regulations prescribed by FDA, USDA, or other government agencies. Each product shall be labeled with the common or usual name, or as Textured Meat Alternate, qualified with the common or usual name of the product. The product should not be formulated in such a manner that would require it to be classified as a Dietary Supplement as described by FDA in 21 CFR 80.1.

(d) *Nutritional specifications.* Textured meat alternates shall have a PER of 1.8 (Casein=2.5) and shall meet the compositional requirements set forth in the following table. The requirements as specified will be deemed to have been met if moisture and ash contents do not exceed the values listed and if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient of the textured meat alternates at such concentration that the level specified in the following table will be substantially exceeded in the final product. Such excess will be permitted but no label claim of nutritional advantage can be made for any such overage. Analytical methods employed should be according to the standard procedures defined in the Association of Official Analytical Chemists, 1970, "Official Methods of Analysis," 11th edition, Washington, D.C. or by appropriate analytical procedures FNS considers reliable.

Nutritional specifications for textured meat alternates [1]

Nutrients	Unit	Required levels for all products	
		Units per gram of protein	Maximum
Moisture	Percent weight.	----------	8
Ash, unflavored product.	do	----------	6
Ash, flavored product.	do	----------	8
Magnesium	Milligram	1.14	----------
Iron	do	.13	----------
Zinc	do	.23	----------
Calcium	do	10.0	----------
Phosphorous	do	10.0	----------
Thiamin	do	.014	----------
Riboflavin	do	.010	----------
Niacin	do	.30	----------
Vitamin B_6	do	.020	----------
Pantothenic acid	do	.040	----------
Folic acid	Microgram	.40	----------
Vitamin B_{12}	do	.090	----------
Vitamin A	International unit.	15.0	----------

[1] All specifications are expressed on a moisture-free basis except for moisture and ash which are expressed on "as-is" basis.

(e) *Hydration specifications.* The moisture content of hydrated textured meat alternates

shall be such that, when hydrated, the mixture will have a minimum of 18 precent protein, by weight.

To determine the ratio of water to be mixed with textured meat alternates the following equation may be used:

$$\frac{\text{Percent dry matter in dry product} \times \text{Percent protein in dry product ("as-is" basis)}}{\text{0.18 (Percent protein in hydrated product)}} - 1 = \text{Pounds water required to add to each pound of dry product}$$

Since most dry products contain 2 to 8 percent moisture, the "percent dry matter" is 92 to 98 percent:

Following are given some water-to-dry product hydration ratios that may be used for commonly used products: (1) Extruded and some isolate formulations contain about 50 to 59 percent protein, in dry form. For these products, addition of 1.5 pounds water (about 2.8 cups) to 1 pound dry product is adequate hydration for most applications. One hundred pounds of hydrated product would require 40 pounds of dry product, plus 7 gallons of water. (2) Concentrates, which generally contain 69 to 72 percent protein, require about 2.5 pounds of water (about 4.2 cups) for each pound of dry product. One hundred pounds of hydrated product would require 28.5 pounds of dry product, plus 8 gallons of water. The Department will issue guidance materials for the use of the State Agencies and FNS Regional Offices on the hydration and use of the various textured meat alternates in child nutrition programs.

(f) Meat and hydrated textured meat alternate combination. The PER of the meat-hydrated textured meat alternate combination shall be not less than 2.5. The fat content of meat-hydrated textured meat alternate combination shall not exceed 30 percent, by weight.

When computing the cooking yield of a product containing a meat and textured meat alternate combination, the hydrated textured meat alternate is evaluated as having the same cooking yield as the uncooked meat, poultry, or fish it replaces.

Effective date. This appendix is proposed to be effective August 31, 1974, except that those sections pertaining to commercially prepared Textured Meat Alternate combination containing meat are proposed to be effective December 31, 1974.

Dated: March 22, 1974.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.74-6995 Filed 3-26-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1]

LABELING OR MISBRANDING OF DRUGS

Misleading Proprietary or Trade Names

Section 502(i)(3) of the Federal Food, Drug, and Cosmetic Act states that a drug is misbranded if it is offered for sale under the name of another drug, and section 502(a) states generally that a drug is misbranded if its labeling is misleading in any particular. Biological products are also subject to these provisions as well as similar provisions under section 351(b) of the Public Health Service Act. Pursuant to the drug efficacy review currently being implemented for human prescription drugs, animal drugs and for human biologics and the comprehensive review of safety and effectiveness undertaken for human OTC drugs, numerous drug products require changes in their formulation and/or labeling to bring them within the requirements of the two acts. It is the policy of the Food and Drug Administration to encourage such reformulation and/or relabeling promptly. It is the responsibility of the manufacturer or distributor of a drug to assure that the labeling is not in violation of the law because of use of a misleading brand name. Numerous questions have arisen as to the circumstances under which changes in formulation and/or labeling may bring drug products within these prohibitions. The Commissioner of Food and Drugs has therefore concluded that regulations should be promulgated to clarify these provisions of the law.

Formulation changes to eliminate or substitute an active ingredient are frequently made. Similarly, changes in labeling to eliminate or substitute an indication or other claim or to add or substitute a warning have also frequently occurred. In the case of an animal drug a change in the species of animal for which it is intended may occur. In general, these changes may be broken down into three general categories:

(1) Those that do not significantly change the use or expected composition of the drug and thus need not be reflected other than by changing the statement of active ingredients, the indications, the warnings, or the other applicable elements of the drug labeling;

(2) Those that significantly change the use or expected composition of the drug and which thus require prominent public notice of the change in addition to the changes made in the drug labeling; and

(3) Those that so fundamentally alter the nature or use of the drug that its brand name must be qualified or changed in addition to the drug labeling changes.

It is the policy of the Food and Drug Administration, in accordance with principles laid down in the courts, to require excision of a brand name only where nothing short of excision would eliminate the possibility of deception, and to permit retention of a brand name where either permanent qualification of the name or prominent public disclosure of the change in the product for a significant period of time is sufficient to inform the public of the change in the product or its use, e.g., *Jacob Siegal Co.* v. *Federal Trade Commission*, 327 U.S. 608 (1946); *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934); *Magnaflow Co., Inc.* v. *Federal Trade Commission*, 343 F. 2d 318 (D.C. Cir. 1965); *Continental Wax Corp.* v. *Federal Trade Commission*, 330 F. 2d 475 (2d Cir. 1964); *Carter Products, Inc.* v. *Federal Trade Commission*, 268 F. 2d 461 (9th Cir. 1959); *Arrow Metal Products Corp.* v. *Federal Trade Commission*, 249 F. 2d 83 (3d Cir. 1957); *Federal Trade Commission* v. *Army and Navy Trading Co.*, 88 F. 2d 776 (D.C. Cir. 1937).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 505, 507, 512, 701(a), 52 Stat. 1049–1055, 59 Stat. 463, 82 Stat. 343–351; 21 U.S.C. 351, 352, 355, 357, 360b, 371(a)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended by 84 Stat. 1308; 42 U.S.C. 262), and under authority delegated to him (21 CFR 2.120), the Commissioner of Food and Drugs proposes to revise § 1.101 in 21 CFR Part 1 to read as follows:

§ 1.101 Drugs and devices; labeling, misbranding.

(a) Among representations in the labeling of a drug or device which render such drug or device misbranded is a false or misleading representation with respect to another drug or device or a food or cosmetic.

(b) A drug product shall be deemed misbranded by reason (among other reasons) of the use of a proprietary or trade name if:

(1) The name includes or suggests the name of one or more but not all of the active ingredients, even though the names of all active ingredients are stated elsewhere in the labeling.

(2) The name includes or suggests an active ingredient which is not contained in the drug, even though the names of all active ingredients are stated elsewhere in the labeling.

(3) The name includes or suggests an indication for use of the drug (including a symptom, disease, pharmacological action or in the case of an animal drug where the name includes or suggests use in a species of animal) which is not contained in the drug labeling, even though the indications for use of the drug are stated elsewhere in the labeling.

(4) The name includes or suggests an indication for use of the drug (including a symptom, disease, pharmacological action or in the case of a new animal drug where the name includes or suggests use in a species of animal) which is not included in an applicable approved new drug application (NDA), new animal drug application (NADA), human biological license, or Antibiotic Form 5 or 6 or, if the drug is not a new drug, a new animal drug, a certifiable or released antibiotic, or a biologic, the indication for use is not based on substantial evidence of the drug's safety and effectiveness .

(5) The name is otherwise false or misleading in any particular. In determining whether use of a brand name is misleading the following factors shall be considered:

(i) The nature and medical significance of the formulation and claims.

(ii) The condition(s) for which the drug has been and will be represented or suggested for use.

(iii) Any functional implication(s) which may be raised by the brand name.

(iv) The target population(s) to which the drug is promoted (professionals or consumers).

(v) The extent to which the target population(s) has been informed of salient facts relating to the drug through labeling and advertising (including direct mailing and educational media such as prescription drug detailing programs) and reports in newspapers, television, and the news media, and the effectiveness of such efforts.

(c) Reformulation to remove or substitute an active ingredient, or relabeling to remove or substitute an indication, or in the case of an animal drug the use in a particular species of animal, or to add or substitute an indication or to add or substitute a warning:

(1) Does not require excision or qualification of the proprietary or trade name, or a prominent notice to the public of the change in the product, if the change in the formulation or labeling does not significantly alter the use or active ingredients of the drug product.

(2) Requires a prominent notice to the public of the change in the product, through conspicuous statements in advertising and labeling for a continuous period of not less than 6 months, if the change significantly alters the use or active ingredients of the drug product or their bioavailability.

(3) Requires qualification of the proprietary or trade name (e.g., through the addition of a prefix or suffix or an explanatory phrase to correct and prevent ambiguity, confusion, or deception) if there has been a fundamental change in the indications for use or active ingredients of the drug product and the name includes or suggests (e.g., through long or close association) a use or composition that is no longer applicable.

(4) Requires excision of the proprietary or trade name if there has been a fundamental change in the indications for use or active ingredients of the drug product; the name includes or suggests (e.g., through long or close association) a use or composition that is no longer applicable or is otherwise misbranded under paragraph (b) of this section; and qualification of the name is inappropriate or inadequate to correct and prevent ambiguity, confusion, or misbranding.

Interested persons may, on or before May 28, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: March 16, 1974.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.74–7073 Filed 3–26–74;8:45 am]

Food and Drug Administration

[21 CFR Parts 121, 135g]

DIETHYLSTILBESTROL (DES) IN EDIBLE TISSUES OF CATTLE AND SHEEP

Proposal To Revoke Test Methods for Determination of Residue Levels

On August 4, 1972 (37 FR 15747) the Commissioner of Food and Drugs published an order withdrawing approval of all new animal drug applications (NADA's) for diethylstilbestrol (DES) in animal feeds for use as a growth promotant in sheep and cattle. On December 9, 1972 (37 FR 26307), the Commissioner revoked regulations pertaining to the use of DES in feeds pursuant to section 512(i) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360b(i).

Orders withdrawing approval of NADA's for DES in implant form and revoking regulations for use of DES in implant form were published in the FEDERAL REGISTER of April 27, 1973 (38 FR 10485) and in the FEDERAL REGISTER of May 3, 1973 (38 FR 10926), respectively.

On January 24, 1974, the United States Court of Appeals for the District of Columbia Circuit vacated all of the above orders. *Chemetron Corporation et al.* v. *United States Dept. of Health, Education, and Welfare*, No. 72–1864 (D.C. Cir., January 24, 1974); *Hess & Clark, Division of Rhodia, Inc.* v. *Food and Drug Administration*, No. 73–1581 (D.C. Cir., January 24, 1974). These decisions have the effect of reinstating the regulations and the approvals of the NADA's.

Since DES is a cancer-causing substance, its approval for use as a growth-promotant in cattle and sheep raised for human food is contingent upon the exemption from the anticancer clause of the new animal drug provision of the act, 21 U.S.C. 360b(d)(1)(H). That exemption is applicable only if the Commissioner of Food and Drugs "* * * finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice * * * (ii) no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary by regulations * * *), in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals * * *" This notice proposes to revoke the presently approved qualitative and quantitative methods for identification and measurement of DES residues in edible tissue, under §§ 135g.26 (b) and (c) and 121.241(e) and (f) (21 CFR § 135g.26(b) and (c) and § 121.241 (e) and (f)), for the reasons stated below, and offers all interested persons opportunity to comment on or before April 26, 1974.

Following action on this proposal, the Commissioner intends to issue a notice of opportunity for hearing proposing to withdraw approval of the new animal drug applications (NADA's) for use of DES in feed and implants for cattle and sheep. If the currently approved methods for detection of DES residues in edible tissues are revoked, the notice of opportunity for hearing will include the issue whether the NADA's should be withdrawn on the ground that section 512(d)(1)(H) of the act is applicable, as well as on any other grounds that may be applicable. Whether or not the methods are revoked, the Commissioner intends to hold a public hearing on the withdrawal of the NADA's, pursuant to section 512(e) of the act, and such hearing shall include the issue of whether DES has been shown to be safe within the meaning of section 512(e)(1)(B) of the act.

The original anticancer clause, section 409(c)(3)(A) of the act (72 Stat. 1786; 21 U.S.C. 348(c)(3)(A)), enacted as part of the Food Additives Amendment of 1958, Public Law 85–929, prohibited the use in food-producing animals of any carcinogenic substance. This prohibition forbade use of a carcinogenic substance in food-producing animals even if there was a total absence of residue of the substance in the edible tissues of the animal after slaughter. The anticancer clause was amended by section 104(f)(1) of the Drug Amendments of 1962, Public Law 87–781 (76 Stat. 784), to exempt from the prohibition of the anticancer clause such carcinogenic substances if the Secretary affirmatively finds, among other things, that no residues of such substance will be found, by methods of examination prescribed or approved by the Secretary by regulation, in the edible tissue of the animal after slaughter. The purpose of this amendment was to allow use of carcinogens in those situations where no residues occurred in the edible tissue of the animal after slaughter. Section 409(c)(3)(A) of the act, as amended, was essentially incorporated into section 512(d)(1)(H) upon enactment of the Animal Drug Amendments of 1968, Public Law 90–399.

DES is a known carcinogen. *Hess & Clark, Division of Rhodia, Inc.* v. *Food and Drug Administration*, No. 73–1581 (D.C. Cir., Jan. 24, 1974); *Bell* v. *Goddard*, 366 F2d 177 (C.A. 7, 1966). Experimental research has shown that DES has caused breast cancer in mice at a level of 6.25 parts per billion (ppb) (Gass, Coats, & Graham, "Carcinogenic Dose-Response Curve to Oral Diethylstilbestrol", *Journal of the National Cancer Institute* (Washington, DC) 33:971–977, 1964).

Methods of examination for DES, pursuant to the amendment to the anticancer clause, were published by the Commissioner in the FEDERAL REGISTER of February 16, 1963 (28 FR § 1507) and have not since been modified. They are now under §§ 135g.26 (b) and (c) and 121.241 (e) and (f). The Commissioner has concluded that the presently approved methods are not adequate to comply with the intent of section 512(d)(1)(H) of the act that no residue of a carcinogenic drug be present in edible tissue after slaughter. As pointed out below, the so-called "mouse uterine" method is not specific for DES; rather, it measures only total estrogenic activity.

Further, the method, as explained below, is of questionable accuracy because of the problems concerning the control tissue to which the test tissue is compared. Finally, the method is not sensitive, i.e., will not dependably detect residues known to exist at levels lower than 2 parts per billion (ppb).

The currently approved qualitative method, the so-called "paper chromatography" method, also fails to meet the necessary requirements of accuracy and sensitivity. The sensitivity of this method is unknown, although the Commissioner has information that based on past use, it is incapable of detecting residues of DES in edible tissues of sheep or cattle at levels below 10 ppb.

The lack of sensitivity alone renders these methods unsuitable for use to permit the continued application to DES of the exemption from the anticancer clause of section 512(d)(1)(H) of the act. Since the reliable sensitivity of the mouse uterine method to measure estrogenic material is 2 ppb, and since the paper chromatography method (used to identify a residue as DES) is not capable of identifying a residue as DES unless the residue in 10 ppb or more, these methods are incapable of confirming a given residue as DES at a level below 10 ppb. This level of sensitivity is in excess of the 6.25 ppb level that has produced cancer in test animals. Residues of DES, when used as directed in both feed premix and implant form have been found in edible tissues at levels below 2 ppb. (Studies of United States Department of Agriculture and Worcester Foundation, originally published in the FEDERAL REGISTER of August 4, 1972 (37 FR 15747) regarding liquid and dry premixes, and published in the FEDERAL REGISTER of April 27, 1973 (38 FR 10485) regarding implants; laboratory reports upon which these results were based are on file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86 5600 Fishers Lane, Rockville, MD 20852.

Specific findings with respect to each of the currently approved methods are set forth below.

I. *The quantitative method.* The quantitative method presently designated for DES in edible tissue of cattle and sheep under §§ 135g.26(b) and 121.241(e) is a bio-assay method, the so-called mouse uterine method. It measures estrogenic response of mice to test tissue by comparing average uterine weight in two groups of laboratory mice. One group is fed tissue which initially contains no estrogenic material, and a second group is fed the tissue being assayed. Known equal quantities of DES must be added to both the control and assay tissue prior to feeding. After 7 days, the mice are sacrificed, and the uteri are surgically extracted and weighed. The difference in uterine weight of controls and unknowns is mathematically related to the estrogenic activity of the assayed tissue. With respect to this method, the Commissioner finds:

1. Although it has on occasion been able to detect residues in the range of .5 ppb, the mouse uterine method is reliable to detect residues of estrogenic material only at quantities of 2 ppb or more. (Umberger, Gass, and Curtis, "Design of a Biological Assay Method for the Detection and Estimation of Estrogenic Residues in the Edible Tissues of Domestic Animals Treated with Estrogens" *Endocrinology* 63:806–815 (1958); Umberger, Curtis and Gass, "Failure to Detect Residual Estrogenic Activity in the Edible Tissues of Steers Fed Stilbestrol"; *Journal of Animal Science* (Albany, NY), 18: 221–226, 1959.)

2. This method is known to be nonspecific. It compares total estrogenic activity of control to assayed tissue, and does not measure the quantity of any particular estrogen. (Umberger, et al., *ibid, Endocrinology* 63:806–815; affidavit of Ernest J. Umberger, March 8, 1974.)

3. Because of the nonspecificity of this method, were quantitations produced, how much of the observed estrogenic activity was due to DES, and how much was due to other natural or added estrogens in the food animal would still be unknown.

4. Often the test must contain a second cycle, and in such circumstances completion of the analysis would take 16 days for the laboratory work (not including necessary dissection, calculation, and reporting time). (Umberger affidavit, *supra.*)

5. The accuracy of the method is questionable because the method requires control tissue of the same type analyzed, but known to be initially free of estrogenic material. If the control tissue contains any estrogenic material, an equal amount of DES in the assayed tissue would be undetected. (Umberger, *ibid, Endocrinology* 63:806–815; Umberger affidavit, *supra.*) This is a serious problem, since there are at the present time no developed, proven methods by which the control tissue can be confirmed to be free of estrogenic material.

6. Quantitations indicated by this method are also noted by two of its originators to be affected by the relative fat content of the assay and control tissues. (Umberger and Gass, "The Effect Of Dietary Fat On The Uterine Weight Response Of Immature Mice To Orola Stilbestrol" *Endocrinology* 63:801–805, 1958.) This poses an additional difficulty in selection of adequate control tissue, since its fat content would therefore have to be matched to that of any assay sample.

7. The United States Department of Agriculture has declined to use this method in the only nationwide slaughterhouse sampling program for beef cattle and sheep. (Letter from Harry C. Mussman, Deputy Administrator, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, United States Department of Agriculture, to Dr. C. D. Van Houweling, Director, Bureau of Veterinary Medicine, Food and Drug Administration, February 13, 1974.)

II. *The qualitative method.* The presently designated qualitative method under §§ 135g.26(c) and 121.241(f) is a paper chromatography method. This method is solely a qualitative method and is not designed nor intended to quantify any DES residue identified by it. With respect to this method, the Commissioner finds:

1. The United States Department of Agriculture is unable to use this method in the only nationwide slaughterhouse sampling program for beef cattle and sheep (letter from Harry C. Mussman, Deputy Administrator, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, United States Department of Agriculture, to Dr. C. D. Van Houweling, Director, Bureau of Veterinary Medicine, Food and Drug Administration, March 8, 1974).

2. The sensitivity of this method in sheep and cattle tissue is not established in published scientific literature. The Commissioner is aware of trials of this method which indicate it will not dependably detect DES residues below 10 ppb in sheep and cattle tissue. (Umberger affidavit, *supra.*) Levels below 10 ppb have been shown to cause breast cancer in test animals. (Gass, Coats, & Graham, "Carcinogenic Dose - Response Curve to Oral Diethylstilbestrol," *Journal of the National Cancer Institute* (Washington, DC) 33:971–977, 1964.)

3. The method was approved without laboratory collaboration for use in sheep and cattle tissue and no collaboration of the method has been submitted since this method was first published in the FEDERAL REGISTER.

For the foregoing reasons, the Commissioner concludes that the methods for detection and quantitation of DES presently under §§ 135g.26(b) and (c) and § 121.241(e) and (f) are not suitable methods by which DES may qualify for an exemption from the anticancer clause of section 512(d)(1)(H) of the act.

Data and information available to the Commissioner concerning the methods upon which this proposal is based are on file and may be seen and/or copied during regular business hours at the office of the Hearing Clerk.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 409(c)(3)(A), 512(d)(1)(H), 701(a), 52 Stat. 1049 as amended, 1053 as amended, 1055; 21 U.S.C. 348(c)(A), 360b(d)(1)(H), 371(a)) and under authority delegated to him (21 CFR 2.120). the Commissioner of Food and Drugs proposes to amend Part 121 and 135g as follows:

1. In Part 121 by deleting paragraphs (e) and (f) from § 121.241.

2. In Part 135g by deleting paragraphs (b) and (c) from § 135g.26.

Interested persons may, on or before April 26, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6–86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Received comments may be seen in the

above office during regular business hours, Monday through Friday.

Dated: March 25, 1974.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.74-7168 Filed 3-26-74;8:45 am]

[21 CFR Parts 610, 620]

BIOLOGICAL PRODUCTS

Proposed Revision of General Safety Test

The Public Health Service Act requires that all biological products to be offered for sale in interstate commerce must be licensed to insure their continued safety, purity and potency. Nearly all licensed products must comply with the requirements of the general safety test (21 CFR 610.11), which has been part of the biologics regulations since thier original adoption. The general safety test is intended to be a final check when each filling of each lot of product has been completed. The purpose of the test is to detect the presence of any toxic contaminant that may have resulted from the manufacturing process. Failure to perform a final safety test creates the risk of death to the recipient of the biological product.

The Commissioner of Food and Drugs is presently conducting a review of existing standards of safety, purity and potency of biological products so that these standards will reflect the best current testing procedures established by the scientific community. The existing safety test for biological products is stated in very general terms. As a result, specific test procedures developed during recent years have been incorporated into the license requirements of each manufacturer on an ad hoc basis. To promote uniformity and specificity in safety testing of licensed products, the Commissioner has determined that these improvements should be set forth in the general safety test regulation.

The principal goal of the Commissioner's proposal is to increase the sensitivity of the test. Therefore, the proposed regulation permits only the intraperitoneal route of administration of the product sample into the test animal, requires higher standards for test animals, and establishes greater specificity in test procedures and interpretation. In addition, the proposed regulation will provide an opportunity for a limited number of repeat tests to establish the safety of a product since test animals often reveal abnormalities which result from natural factors not caused by the test product.

As the safety test prescribed in the additional standards for licensed Pertussis Vaccine (21 CFR 620.6(a)) is patterned after and relates to the general safety test regulation, it is proposed that this regulation also be revised and clarified to be consistent with the proposed amendments to the general regulation.

Therefore, pursuant to provisions of the Public Health Service Act (sec. 351, 58 Stat. 702, as amended, 42 U.S.C. 262), and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that Parts 610 and 620 of Subchapter F of Title 21 of the Code of Federal Regulations (formerly Part 273 recodified in the FEDERAL REGISTER of November 20, 1973 (38 FR 32048)) be amended as follows:

1. In Part 610, by revising § 610.11 to read as follows:

§ 610.11 General safety.

In addition to specific safety tests prescribed in this subchapter for individual products, a general safety test to insure freedom from extraneous toxic contaminants in biological products intended for administration to humans shall be performed in accordance with the following conditions:

(a) *Product to be tested.* The general safety test shall be conducted upon a representative sample of the product in the final container from every final filling of each lot of the product. If any product is to be processed further after filling, such as by freeze-drying or pasteurization, the test shall be conducted upon a sample from each filling of each drying chamber run or pasteurization bath. Nonliquid products shall be dissolved or ground and suspended in an appropriate diluent in a concentration of at least one human dose per five milliliters prior to testing. Insoluble material shall be thoroughly mixed in a suspension.

(b) *Test animals.* Only overtly healthy guinea pigs weighing less than 400 grams and mice weighing less than 22 grams shall be used. The animals shall not have been used previously for any purpose.

(c) *Procedure.* Inject intraperitoneally 0.5 milliliter of product into each of at least 2 mice and 5.0 milliliters of product into each of at least 2 guinea pigs. The duration of the test shall be not less than 7 days nor more than 12 days; the exact time shall be established by the manufacturer and not varied subsequently. Guinea pigs shall be observed and weighed individually on the first and last days of the test period and on 3 to 5 of the intervening days depending on the length of the observation period. Mice shall be observed and weighed individually on at least the first and last day of the test period. At the time of each observation, the weight of each animal and any abnormal signs shall be recorded.

(d) *Test requirements.* A safety test is satisfactory if all animals (1) survive the test period, (2) do not exhibit any abnormal signs during the test period, and (3) weigh no less at the end of the test period than at the time of injection.

(e) *Repeat tests*—(1) *First repeat test.* If a filling fails to meet the requirements of paragraph (d) of this section on the initial test, a repeat test may be conducted as prescribed in paragraph (c) of this section. The filling is satisfactory only if each retest animal meets the requirements prescribed in paragraph (d) of this section.

(2) *Second repeat test.* If, on the first repeat test, a filling fails to meet the requirements of paragraph (d) of this section and at least 50 percent of all of the test animals used in the initial and first repeat tests survive, a second repeat test may be conducted. The second repeat test shall be conducted as prescribed in paragraph (c) of this section, except that at least 4 guinea pigs and 4 mice shall be used. The filling is satisfactory only if each second repeat test animal meets the requirements prescribed in paragraph (d) of this section.

(f) *Test variations.* Variations in the general safety test may be offered as an amendment to the product license and must be approved by the Director, Bureau of Biologics, Food and Drug Administration. Approval will be given only if the licensee provides substantial evidence demonstrating that the proposed test variation will assure safey equal to or greater than the test prescribed in this section.

(g) *Exceptions.* The test prescribed in this section need not be performed for Whole Blood (Human), Red Blood Cells (Human), Cryoprecipitated Antihemophilic Factor (Human), or Single Donor Plasma (Human).

2. In Part 620, by revising § 620.6(a) to read as follows:

§ 620.6 General requirements.

(a) *Safety.* Each lot of Pertussis Vaccine shall be tested for safety by the procedures prescribed in § 610.11 of this chapter except that the test shall consist of the intraperitoneal injection of no less than one-half of the recommended largest human dose into each of the mice, and either the intraperitoneal injection of no less than three times the recommended largest individual human dose, or the subcutaneous injection of 5.0 milliliters into each of the guinea pigs.

* * * * *

Interested persons may, on or before April 26, 1974, file with the Hearing Clerk, Food and Drug Administration, Room 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: March 21, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-7072 Filed 3-26-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 1, 91]

[Docket No. 13581; Notice No. 74-13]

AIRPORTS WITH OPERATING CONTROL TOWERS

Operation of Aircraft

The Federal Aviation Administration is considering amendments to § 1.1 and

§ 91.87 of the Federal Aviation regulations relating to the operation of aircraft at airports having operating control towers. The proposed amendments would add a definition of "movement area" and more clearly describe when a clearance is required from Air Traffic Control before a pilot may taxi an aircraft.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before June 10, 1974, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Section 91.87 of the Federal Aviation regulations prescribes the rules that each person operating an aircraft to, from, or on an airport with an operating control tower must comply with. Paragraph (h) of that section provides that no pilot may, at an airport with an operating control tower, taxi an aircraft "on" a runway, or takeoff or land an aircraft, unless he has received an appropriate clearance from ATC. The rule, as currently worded, is silent with respect to the need to receive an Air Traffic Control clearance in order to operate elsewhere than "on" a runway. Therefore, it is proposed to add to Part 1 of the Federal Aviation Regulations a definition of the "movement area" of an airport. "Movement area" would be defined as consisting of all areas of an airport used for the taxiing, takeoff, and landing of aircraft, except loading ramps and parking areas. The term "movement area" would also be used in § 91.87(h) instead of "runway."

It appears that a revision of paragraph (h) of § 91.87 will clarify the ambiguity as to the areas of an airport on which a clearance from Air Traffic Control is required.

(Section 307(c), Federal Aviation Act of 1958 (49 U.S.C. 1348(c)); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 1 and 91 of the Federal Aviation Regulations as hereinafter set forth:

1. By adding a definition of "Movement Area" in § 1.1 to read as follows:

§ 1.1 General definitions.

* * * * *

"Movement Area" means, with respect to an airport, the runways, taxiways, and other areas of the airport that are used for the taxiing, takeoff, and landing of aircraft, except loading ramps and parking areas.

* * * * *

2. By amending paragraph (h) of § 91.87 to read as follows:

§ 91.87 Operations at airports with operating control towers.

* * * * *

(h) *Clearances required.* No pilot may, at an airport with an operating control tower, taxi, takeoff, or land an aircraft on a movement area, unless he has received an appropriate clearance from ATC. A clearance to "taxi to" a runway is a clearance to cross all intersecting runways but is not a clearance to "taxi on" the assigned runway.

Issued in Washington, D.C., on March 15, 1974.

RAYMOND G. BELANGER,
Director,
Air Traffic Service, AAT-1.

[FR Doc.74-7053; Filed 3-26-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-SO-26]

FEDERAL AIRWAYS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation regulations that would alter V-159 from Palm Beach, Fla., to Vero Beach, Fla., and V-267 east alternate from Palm Beach, Fla., to Orlando, Fla.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before April 26, 1974 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would realign V-159 in part from Palm Beach via the Palm Beach 326° T/M radial and the Vero Beach 178° T/M radial to Vero Beach. V-267E would be realigned in part from Palm Beach via the INT Palm Beach 326° T/M radial and the Orlando 162° T/M radial to Orlando. The realigned V-267E would conform to revised terminal procedures at Palm Beach and would reduce the airway distance from Orlando to Palm Beach. V-159 would be adjusted slightly to coincide with V-267E as realigned northwest of Palm Beach.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 21, 1974.

RAYMOND M. MCINNIS,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.74-7058 Filed 3-26-74;8:45 am]

[14 CFR Part 91]

[Docket No. 13582; Notice No. 74-14]

CIVIL AIRCRAFT FLEET NOISE REQUIREMENTS

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending the Federal Aviation Regulations to establish additional civil aircraft noise requirements. The proposed amendments would require that subsonic turbojet engine-powered airplanes with maximum weights of 75,000 pounds or more, and that are operated under Parts 91, 121, 123, 129, and 135 of the Federal Aviation Regulations, conform to Part 36—"Noise Standards: Aircraft Type and Airworthiness Certification."

Interested persons are invited to participate in the subject rulemaking process by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Ave. SW., Washington, D.C. 20591. All communications received on or before June 28, 1974, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments, in the rule docket for examination by interested persons. Comments are specifically requested on the overall environmental aspects of this proposal.

This Notice is published after consideration of the comments received in response to Advance Notice of Proposed Rule Making, Notice 73-3, "Civil Airplane Fleet Noise Requirements" (Docket No. 12534), published in the FEDERAL REGISTER (38 FR 2769) on January 30, 1973 (hereinafter referred to as Notice 73-3).

Notice 73-3 proposed to control and reduce airplane noise emissions by establishing a limit on the fleet noise levels of each air carrier operating under Part 121 of the Federal Aviation Regulations. Three phases of noise limits were proposed to be effective in a progressive reduction manner. The first and second phases of fleet noise levels were to be determined in 1973 and 1976, respectively, through the application of a logarithmic

equation using the individual noise levels and operations of each airplane within the carrier's fleet. The third and final phase in establishing fleet noise level limits would have required that by July 1, 1978, all airplanes in the carrier's fleet not exceed the Appendix C levels of Part 36 of the Federal Aviation Regulations.

The comments received in response to Notice 73–3 were almost unanimously opposed to the use, implementation, structure, mathematical relationship and general concept of the logarithmic equation for determining fleet noise levels. The comments suggested that the equation proposed mathematical manipulation of noise; that it did not give the desired credit for quieter aircraft; that it should be a linear relationship rather than logarithmic; that it did not include weight factors for day-night operations; that it did not credit a factor for community annoyance; and that it did not account for effective noise levels at different airports. While it is true that the proposed mathematical equation would not have satisfied many of the objections raised by the commentators, the primary objective of that equation was to assist the fleet operator in evaluating his fleet noise levels in relation to the noise limits proposed. The proposal would have accomplished that objective. However, upon review of all the comments received, including an analysis of alternative equations submitted in response to Notice 73–3, the FAA has determined that the objective of the fleet noise rule can be attained without the use of any mathematical equation.

In addition, a large number of comments expressed strong opposition to the proposed exclusion from the noise requirements in Notice 73–3 of airplanes used in overseas, foreign and intrastate operations by Part 121 operators. The commentators pointed out that such exclusion would deprive many of the major airports in the more noise sensitive areas of the benefits of the noise reduction provided by that Notice. In view of the foregoing, and after further consideration, the FAA now considers it appropriate to cover subsonic turbojet airplanes of U.S. registry weighing 75,000 pounds or more operated under Part 121, including those in overseas and foreign air commerce. Moreover, this proposal would cover all subsonic turbojet engine-powered airplanes of U.S. registry weighing 75,000 pounds or more operated under Parts 91, 123, and 135. As such, it would apply to corporate and other general aviation operators as well as air carriers, certain air taxi and commercial operators, and air travel clubs. However, so far as U.S. aircraft are concerned, it is proposed to limit the applicability under this Notice to airplanes having standard airworthiness certificates. The FAA has not determined that a retrofit to Part 36 noise levels for experimentally and provisionally certificated airplanes or airplanes having a restricted category certificate would be technologically practicable. It should be noted that there are a number of U.S. registered civil airplanes that are of the type covered by this proposal but that are operated entirely outside the United States. This proposal would not apply to those airplanes.

The FAA has given particular attention to the matter of including foreign civil turbojet engine powered airplanes weighing 75,000 pounds or more. On the one hand, it is preferable that environmental problems affecting international civil aviation, like other aviation problems affecting more than one nation, be resolved by the International Civil Aviation Organization (ICAO). The United States strongly supports the effort being made in ICAO to achieve uniformity in the noise reduction area. Uniform international noise standards are viewed as the best ultimate solution to the international aspects of the aircraft noise problem. The United States will thus continue to work through ICAO to establish appropriate international noise standards.

On the other hand, the FAA does not believe that foreign registered aircraft should be excluded from application of Fleet Noise Level regulations pending the development of appropriate international standards. The regulations that would be issued following this Notice must, under the Noise Control Act of 1972, be economically reasonable, technologically practicable, and appropriate to the type of aircraft to which they apply. To withhold applicability of reasonable standards to foreign aircraft would not be an appropriate response to the FAA's duty, under that Act, to protect the public from aircraft noise. In addition, excluding foreign aircraft could be unfair to U.S. operators of similar aircraft who would be forced to operate (in the same markets as foreign aircraft) with an economic burden of noise compliance that is not borne by the foreign operators. On balance, the FAA believes that equal and nondiscriminatory application of economically reasonable noise standards, to all operators, is an appropriate noise regulatory policy. Detailed comments from foreign operators (as well as U.S. operators) are invited with respect to the technological and economic aspects of this proposal. Such comments will be carefully reviewed prior to taking any action.

Since the U.S. aircraft covered by this proposal are limited to those that have U.S. Standard Airworthiness Certificates, the only foreign aircraft that would be covered are those that, if registered in the U.S., would be required by applicable Federal Aviation Regulations to have a U.S. Standard Airworthiness Certificate in order to conduct their intended operation in the United States. Finally, since the purpose of this proposal is to ensure that the takeoff, sideline, and approach noise levels of Part 36 are complied with, it would serve no useful purpose to apply those standards to foreign aircraft that merely overfly the United States (and thus do not expose airport environments to their noise levels). This proposal, therefore, would only cover foreign aircraft that land or take off in the United States.

A number of commentators recommended that compliance times earlier than those proposed in Notice 73–3 be established. The FAA does not agree. The compliance dates proposed were based primarily on the time requirements associated with the implementation of retrofit modifications to the forecast fleet of pre-Part 36 aircraft. Consideration was given to tooling for retrofit hardware production, the time required in obtaining airworthiness certification for engine nacelle-airframe combinations, material procurement lead time, and projected installation time. For these reasons, earlier compliance dates are not considered reasonable.

Several commentators indicated concern regarding the availability of retrofit hardware, and doubt that the rule would be economically reasonable. FAA's investigation shows that retrofit designs are either available or are being flight tested for many types of airplanes covered by this proposal and that these types constitute most of the fleet. FAA is aware that this proposal includes the relatively few pure turbojet engine-powered airplanes currently in service. No acoustic modification exists for these aircraft and expensive reengining could be required to achieve conformance with our standards. However, based on the rate at which these airplanes are being retired from service by U.S. operators, it appears that few, if any, would be in operation by 1978. As previously stated, the expected retrofit configurations are definable, and from these definitions, retrofit cost and impact on performance and weight can be estimated so one can assess whether retrofit is economically reasonable. Economic analysis of the cost impact of retrofit on the collective operators indicates that the proposed program of retrofit is economically reasonable, though individual operators may consider the costs to be a financial burden. The FAA notes that the Civil Aeronautics Board generally allows fare adjustments in the domestic air carrier industry to reflect increases in operating costs. However, the impact of retrofit will vary among individual carriers, and fare adjustment approvals retain uniformity of fares among competing carriers. In addition, the rates for flag carriers are established by the International Air Transport Association, which has stated that it favors retrofit by means of public funding rather than fare adjustments.

In the light of the comments received and after further review within the FAA, it is believed that a phased compliance with Part 36 of the Federal Aviation Regulations, including Appendix C, is the appropriate means of implementing fleet noise requirements. While this proposal retains many of the proposed requirements of Notice 73–3, it is substantially different in many respects. The significant comparisons are discussed in some detail hereinafter.

As proposed in Notice 73–3, this notice applies to turbojet engine-powered airplanes with maximum weights of 75,000

pounds or more. Contrary to numerous comments received in response to Notice 73–3, the FAA does not now consider it appropriate to propose these noise requirements for airplanes weighing less than 75,000 pounds. While it has been demonstrated that the manufacturers of some jets of less than 75,000 pounds maximum weight can, on a new design production basis, meet or better the noise levels prescribed in Part 36, this in itself does not justify a retrofit requirement for operators of jets in this weight category. The feasibility of potential application of these advances in small jet engine technology and the related costs in in-service retrofit are currently being evaluated. Therefore, jet airplanes with maximum weights of less than 75,000 pounds are not being included at this time.

All of the airplanes covered by the proposal, including those airplanes operated by air taxi operations, air travel clubs and those airplanes operated under Part 91, as well as the flag, domestic and supplemental air carriers and commercial operators operating under Part 121, would have to be in compliance with Part 36 by not later than July 1, 1978. Most of the Part 91 operators, the air taxi operators and the air travel clubs who have an airplane covered by this proposal in their fleet of airplanes generally have only one such airplane. Since the domestic, flag, supplemental air carriers and commercial operators operating under Part 121 and foreign air carriers operating under Part 129 have most of these airplanes, the impact of the operations of these operators far exceeds that of the other classes of users in terms of community noise exposure nationwide. For this reason it might be considered appropriate in the public interest to propose that the Part 121 and Part 129 operators have a significant portion of their airplanes meet the Part 36 requirements at an intermediate date. But as a consequence of engine/nacelle intermix problems prior to complete compliance of a total fleet and considerations of alternate retrofit cost for different compliance options, such a scheme, is impractical. To assure progress, though, it is now proposed that all domestic, flag, and supplemental air carriers and foreign air carriers, and commercial operators holding certificates under Part 121, cannot operate their subsonic turbojet engine-powered airplanes with maximum weights of 75,000 pounds or more after July 1, 1976, unless they can submit evidence that half of their inventory of engine/nacelles for these airplanes are of a type that has been demonstrated to permit these aircraft types to meet the requirements of Part 36 if the engine/nacelles were deployed in a full set.

Under this proposal, the operators would have the alternative of modifying existing airplanes, replacing them with other airplanes meeting the Part 36 requirements, or a combination of these actions.

None of the persons covered by this proposal should have any difficulty in determining whether an airplane has been shown to meet the Part 36 requirements since Part 36 requires that an entry to that affect be placed in the Airplane Flight Manual for the airplane.

As many commentators recommended with respect to Notice 73–3, this proposal provides for individual aircraft meeting the prescribed noise levels. However, this proposal does not, as suggested by some commentators, reduce the ultimate noise level for all airplanes to a minus (−) 10dB from the current Part 36, Appendix C. The FAA is addressing that matter in a separate rule-making action.

(Secs. 313(a), 601, 603, 604, and 611, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424, and 1431 as amended by the Noise Control Act of 1972 (P.L. 92–574)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); Executive Order 11514, March 5, 1970).

In consideration of the foregoing, it is proposed to amend Part 91 of the Federal Aviation Regulations by adding a new Subpart E to read as follows:

Subpart E—Noise Requirements

Sec.
91.301 Applicability.
91.303 Relation to Part 36.
91.305 Interim noise requirements for air carriers.
91.307 Noise requirements for all airplanes.

Subpart E—Noise Requirements

§ 91.301 Applicability.

This subpart prescribes noise requirements for the operation, in the United States, of—

(a) U.S. registered civil subsonic turbojet engine-powered airplanes with maximum weights of 75,000 pounds or more and having standard airworthiness certificates; and

(b) foreign civil subsonic turbojet engine-powered airplanes with maximum weights of 75,000 pounds or more that land or take off in the United States and that, if registered in the United States, would be required by applicable Federal Aviation Regulations to have U.S. standard airworthiness certificates in order to conduct the operations intended for the airplane.

§ 91.303 Relation to Part 36.

Unless otherwise specified, all references in this subpart to the requirements of Part 36 of this chapter, include the noise levels of Appendix C of that Part, as effective on December 1, 1969, notwithstanding the provisions of that part excepting certain aircraft from those noise levels and notwithstanding the tradeoff provisions of that part.

§ 91.305 Interim noise requirements for air carriers.

After June 30, 1976, no domestic, flag, or supplemental air carrier or commercial operator holding a certificate under Part 121, of this chapter, or foreign air carrier holding a certificate under Part 129 of this chapter may operate, under that certificate, any airplane covered by this subpart and listed on the aircraft record required for domestic and flag air carriers or on the operations specifications required for the supplemental air carriers, commercial operators, and foreign air carriers, that is not shown to meet the requirements of Part 36 of this chapter unless at least one-half of the engine/nacelles for the airplanes covered by this subpart and listed for the certificate holder are of a design that has been shown to permit those aircraft types to meet the requirements of Part 36 if the engine/nacelles were deployed in a full set.

§ 91.307 Noise requirements for all airplanes.

After June 30, 1978, no person may operate any airplane covered by this subpart unless that airplane is shown to meet the requirements of Part 36 of this chapter.

Issued in Washington, D.C., on March 22, 1974.

R. P. SKULLY,
Director, Office of Environmental Quality.

[FR Doc. 74–7083 Filed 3–26–74; 8:45 am]

CIVIL SERVICE COMMISSION

[5 CFR Part 900]

ADMINISTRATION OF STANDARDS FOR MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to authority of section 503 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. section 4728), the Civil Service Commission proposes to add subpart G to Part 900 of Title 5 of the Code of Federal Regulations to implement section 208 of the Intergovernmental Personnel Act of 1970.

Interested persons may submit written comments, objections, or suggestions to the Bureau of Intergovernmental Personnel Programs, U.S. Civil Service Commission, Washington, D.C. 20415, on or before April 26, 1974. Written comments, objections, and suggestions submitted will be available for public inspection at the address given in this notice during the Commission's regular business hours (8:15 a.m. to 4:45 p.m., Monday through Friday). The proposed subpart G reads as follows:

Subpart G—Administration of the Standards for a Merit System of Personnel Administration

Sec.
900.701 Purpose.
900.702 Applicability.
900.703 Definitions.
900.704 Review of merit system plans.
900.705 Review of personnel operations.
900.706 Reports and records.
900.707 Compliance.

AUTHORITY: The provisions of this subpart G issued under 42 U.S.C.A. § 4728, section 4763; and E.O. 11589, 3 CFR, 1971 Comp., p. 152.

§ 900.701 Purpose.

(a) This subpart effectuates the administration of the Standards for a Merit

System of Personnel Administration (hereinafter the "Merit System Standards") as set out in 45 CFR 70, or as may be modified or superseded, for which the U.S. Civil Service Commission (hereinafter referred to as the "Commission") was given the responsibility by section 208 of the Intergovernmental Personnel Act of 1970 (91 Stat. 648).

(b) This subpart provides regulations under which the Commission will (1) determine whether plans for merit system administration conform to the requirements of the Merit System Standards; (2) evaluate personnel operations for compliance with the approved plans; and (3) provide a procedure for resolving issues of conformity or compliance.

§ 900.702 Applicability.

This subpart applies to each program or activity receiving a grant-in-aid subject to the Merit System Standards.

§ 900.703 Definitions.

In this subpart:

(a) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

(b) "Approved State plan" means a merit system plan found by the Commission to conform substantially with the Merit System Standards.

(c) "Federal agency" means the Federal agency providing financial or other assistance.

(d) "Federally aided State agency" means any State government agency administering a grant-in-aid or other Federally assisted program that under a law or regulation specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to an aided program or activity.

(e) "Local agency" means an agency of a county or municipal government or like jurisdiction administering grant-aided programs or activities under the supervision of a federally aided State agency.

(f) "Merit System Plan" means the laws, rules, regulations, and policy statements of a State or local government under which a merit system is required as a condition for receiving a Federal grant or other assistance.

(g) "State merit system agency" means a State Civil Service Commission, Personnel Department, Merit System Council or other similar personnel agency providing services to State and/or local agencies.

(h) "Local merit system agency" means a Civil Service Commission, Personnel Department, Merit System Council or other similar personnel agency providing services to local agencies.

§ 900.704 Review of merit system plans.

(a) All federally aided State and local agencies shall maintain a merit system plan which shall be subject to review by the Commission.

(b) The regional office of the Commission having jurisdiction over the area where the federally aided State agency is located is responsible for reviewing the State's merit system plan.

(c) The State merit system agency shall be designated as a central submittal agency by the federally aided State agencies and shall submit for review the State's merit system plan and amendments thereto to the Commission's regional office.

(d) The federally aided State agency shall review the merit system plan and amendments thereto of each local agency, except that under a prior agreement this review may be conducted by a State merit system agency or other appropriate organization on behalf of the federally aided State agency.

(e) A Federally aided State agency or other organization conducting a review as provided in paragraph (d) of this section shall consult, as necessary, with the appropriate regional office of the Commission on questions of interpretation of the Merit System Standards.

(f) A review under paragraph (d) of this section shall include negotiations with the local agency to correct any deviations, and if required, shall include a recommendation for technical assistance by the State government or the Commission.

§ 900.705 Review of personnel operations.

(a) The Commission, in cooperation with the appropriate Federal agency, shall make or arrange for onsite reviews of each State merit system agency and each Federally aided State agency to determine compliance with the approved State plan, except that reviews of the latter agencies by the State merit system agency may be accepted in lieu of Commission reviews.

(b) Federally aided State agencies, in consultation with the appropriate regional office of the Commission, shall make or arrange for onsite reviews of the operations of the merit system in each local agency to determine compliance with the approved plan.

§ 900.706 Reports and records.

(a) Each Federally aided State or local agency and each State or local merit system agency shall maintain personnel records necessary for the proper administration of a merit system. The records shall consist of, but are not limited to: (1) Classification plans, (2) compensation plans, (3) examination announcements, and (4) affirmative action plans for equal employment opportunity.

(b) Each Federally aided State or local agency and each State or local merit system agency shall permit the Commission during normal business hours to review its books, records, and other sources of information as may be required to ascertain compliance with this subpart.

(c) Each Federally aided State or local agency shall furnish annually to the Commission completed report CSC Form 1129, Review of Personnel Operations—Grant-Aided Agency, and other reports as may be required to show compliance with the Merit System Standards.

(d) Each State and local merit system agency shall furnish annually to the Commission completed report CSC Form 1128, Review of Personnel Operations—Merit System Agency.

§ 900.707 Compliance.

(a) The Commission, when corrective action is required, will negotiate with the appropriate State merit system agency to achieve compliance and will coordinate its activities with the appropriate Federal agency.

(b) The Commission shall request the appropriate Federal agency to assist in rendering technical assistance when required to achieve compliance.

(c) The Commission, when compliance with the Merit System Standards is not achieved after negotiation or the rendering of necessary technical assistance, shall make a finding of lack of substantial conformity and forward this finding to the Federal agency, recommending that grant termination procedures or other appropriate action be initiated.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6965 Filed 3-26-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 171]

CERTIFICATION OF PESTICIDE APPLICATORS

Extension of Comment Period

This notice extends the period for filing comments related to the proposed rule published February 22, 1974 (39 FR 6730); this proposed rule would establish standards of competence under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973) for applicators using pesticides pursuant to section 3 of FIFRA. The comment period provided for in the February 22, 1974 publication was to end on March 25, 1974.

Because of the interest generated by the proposed regulations, the time for filing comments is hereby extended for an additional 30 days. There is, however, considerable urgency in promulgating these regulations in final form as soon as possible in order to provide the States the maximum amount of time to implement this section of the Act. The Agency hopes that this extension of the comment period will not result in a delay in the final promulgation of the regulation. To avoid this delay, the Agency would urge that all comments be forwarded as close to the original March 25 date as is possible or practical. Early submission will ensure that the comments receive the most complete review and consideration prior to promulgation of the final rule.

All persons who desire to submit written information or views in connection

with this matter may file as late as April 25, 1974. Such comments should be filed in duplicate and addressed to Mrs. Betty J. Billings, Hearing Clerk, Environmental Protection Agency, Room E-1019, Waterside Mall, Washington, D.C. 20460. All written comments filed pursuant to this notice will be available for public inspection at the Office of the Hearing Clerk during regular business hours, 8 a.m. to 4:30 p.m. daily.

Dated: March 21, 1974.

CHARLES L. ELKINS,
Acting Assistant Administrator for Hazardous Materials Control.

[FR Doc.74-7065 Filed 3-26-74;8:45 am]

[40 CFR Part 172]

SHIPMENTS OF PESTICIDES FOR EXPERIMENTAL USE

Issuance of Permits

Notice is hereby given that, pursuant to the authority of Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 983), the Administrator of the Environmental Protection Agency (EPA) proposes to establish a new Part 172 of Chapter I of Title 40 of the Code of Federal Regulations and revoke § 162.17. The proposed regulations shall read as set forth below. The intent of this proposed rulemaking is to revise present procedures with respect to the use of pesticides for experimental purposes so as to conform to the provisions of FIFRA, as amended.

Background. The issuance of experimental use permits, as proposed in these regulations, does not represent a new pesticide regulatory activity. For more than twenty years, pesticide experimentation has been regulated by EPA and its predecessor agencies. Although the 1947 FIFRA provided no explicit authorization to regulate experimental uses of pesticides, Section 7(a)(4) of the 1947 Act has been the statutory basis for this regulatory activity. This section exempted from the penalty provisions of the Act experimental pesticide use "by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary."

The current regulations for this regulatory program (referred to as the temporary permit program) appear at 40 CFR § 162.17. Basically, these regulations (as amended in 1964) state that temporary permits "will only be issued for bona fide experimental programs under the supervision of qualified persons." The regulations detail the information which must be submitted for the issuance of a permit and the requirements for data reporting during an experimental program.

In contrast to the 1947 FIFRA, FIFRA, as amended, specifically authorizes the issuance of experimental use permits and can best be interpreted as a codification of the experimental permit program existing under the 1947 FIFRA. Section 5(a) states:

> Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under Section 3.

The purpose behind Section 5 is to facilitate the generation of data necessary to support an application for registration under Section 3 and yet provide sufficient regulatory control to prevent adverse environmental effects.

Section 5(c) provides that the "use of a pesticide under an experimental permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit." Thus, EPA is specifically authorized to regulate all use aspects of a testing program. Although these authorities were not specified in the 1947 FIFRA, again they were interpreted as part of EPA's regulatory authority under the Act and were reflected in the regulations.

The other provisions of Section 5 authorize the Administrator to:

> (1) Establish a temporary tolerance for a pesticide prior to issuing an experimental use permit,
>
> (2) Specify that, for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment, and
>
> (3) Authorize States to issue experimental use permits.

Environmental Explanation. The development of an effective pesticide is a multi-stage process often requiring substantial expenditures of time and finances. Typically, a commercial developer, college research department, or governmental agency initiates the process by applying a test substance in its own laboratories or test fields. The objective at this point is to determine whether the substance has sufficient pesticidal potential to warrant further formulation and research development. Also, it is at this stage that basic data on toxicity and environmental effects are obtained. The process then moves into a stage where the pesticide generally is tested on a larger scale, primarily to determine the effects of factors such as climatic conditions, soil composition, severity of pest problems, and application rates, as they relate to efficacy. When the developer has accumulated sufficient data, he seeks registration under Section 3.

Between October 1, 1972 and September 20, 1973 the Registration Division received 132 applications for experimental use permits and issued 96 permits. These permits authorized the use of approximately 1.5 million pounds of pesticides. Total experimental use actually was larger by an unknown quantity, since Federal and State agencies were not required to obtain permits for their own experimental programs. While total experimental use under these proposed regulations cannot be predicted, it is not likely to be quantitatively large in comparison to total annual use of pesticides in the U.S., which is more than one billion pounds. On the other hand, while it is not anticipated that pesticide research and development will increase greatly, the number of permit applications received by EPA will increase significantly under the provisions of FIFRA, as amended, since permits are required for Federal and State programs.

Under the 1947 FIFRA, any Federal or State agency authorized to conduct pesticide research did not need an experimental permit and was exempt from the provisions of the Act. Thus, several Federal agencies, particularly the Departments of Agriculture and Interior and State agricultural colleges, have conducted extensive pesticide research programs without being subject to FIFRA regulation. FIFRA, as amended, however, does not grant a blanket exemption to Federal and State agencies. While the legislative history is silent on this question, it is EPA's position that no exemption, such as that granted by the 1947 FIFRA, was intended under the 1972 amendments or can be allowed. Section 5(f) of the Act does authorize "any State to issue an experimental use permit for a pesticide" if a State plan for the issuance of such permits has been approved by the Administrator. This section has been interpreted as granting States with approved plans the authority to issue experimental permits only for pesticides designed to meet "special local needs" for eventual registration under Section 24. Again, the legislative history does not discuss this situation, but EPA has interpreted Section 5(f) as being limited by Section 24. Since experimental use permits are issued to gather data to support registration, States can be authorized to issue experimental use permits only for pesticides they could ultimately register for a "special local need," i.e., a permit authorizing distribution and use within that State to gather data necessary to support State registration.

The most important environmental consideration in the development of these proposed regulations is the necessity of striking a balance between facilitating—or, as a minimum, not unduly impeding—pesticide research and development and protecting against human and environmental injury. Experimental use of pesticides can, of course, pose both human and environmental hazards; it should be noted, however, that basic data on toxicity are required before an experimental use permit can be issued. On the other hand, experimental use and testing are essential to the development of new, less hazardous, more effective pesticides, including both chemical and biological agents. In short, there are both risks and

benefits associated with experimental use of pesticides. Given these considerations, EPA has designed the proposed regulations in such a way as to place experimental programs under reasonable constraints without imposing burdens unrelated to needed protection of human health and the environment. The remainder of this section on environmental considerations deals with the principal issues bearing on the question of what constraints are reasonable and necessary.

1. Among the research and development steps involved in accumulating data for registration, for which ones should experimental use permits be required? As indicated above, the first stages of development are designed simply to determine whether or not a substance has any pesticidal value. Testing is typically done on a wide range of substances in highly controlled laboratory settings. If a substance shows promise, various formulations are usually evaluated in small plot tests. Again, these are highly controlled and represent minimal hazards because of the small quantities applied and the highly trained personnel conducting such tests. Once a broad outline of a pesticide's character has been developed, it becomes necessary to test the pesticide under field conditions. At this point, larger quantities of the pesticide are used, often in several different locations. Thus, the potential hazards can be greater. EPA has determined that it is at this stage that an experimental use permit should be required to protect the environment. With basic data obtained from laboratory and small plot testing on efficacy, toxicity, and environmental effects, a reasonably good prediction on the pesticide's effects can be made; if a permit is granted, conditions can be imposed to protect applicators and other persons and the environment. The requirement to obtain a permit at this stage should be no real burden, since pesticides reaching this level of development are likely to become candidates for registration and the data accumulated in the experimental program will be required for registration. Finally, the decision to exempt the initial stages of experimentation from the requirements of these proposed regulations is consistent with Section 12(b)(5), which exempts from the penalty provisions of the Act the shipping of "a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use." This language incorporates into the statute the existing regulatory policy, under which permits are not required for experimental use of substances not yet determined to have pesticidal value.

2. Should the sale of experimental pesticides be prohibited? Regulations under the 1947 FIFRA provided that material covered by a temporary permit shall not be offered for general retail sale. That terminology has been questioned many times and interpreted a number of different ways. It has been found to be ambiguous and unenforceable. This has made it difficult to prevent the introduction of experimental pesticides into unregulated and unmonitored use situations.

While the alternative of prohibiting the sale of experimental pesticides was considered, EPA has determined that such a provision would needlessly add to the cost of pesticide development. There is no environmental or human health reason why a participant in an experimental program should not compensate the developer for any benefit received. The cost to participants generally will be minimal, and sale itself has not caused problems. Rather, the problem has centered on the imprecise sale limitations of the current regulations. To solve this problem without imposing an unnecessary burden on research programs, the proposed regulations would limit sale or distribution to participants in experimental programs and prohibit resale or other retail sale or other distribution. Such a restriction should provide an adequate safeguard to prevent a manufacturer from trying to market an experimental pesticide. Further, permits will only authorize the use of enough experimental pesticide to gather data to support registration.

3. To what extent should permittees be required to make reports on their programs? EPA has a responsibility to monitor experimental programs to detect any unforeseen effects and failures by program participants to adhere to permit conditions. The current regulations require the submission of periodic reports every three months during an experimental program and a final report at its conclusion. The major shortcoming of this is that it frequently deprives EPA of the opportunity to observe experimental pesticide applications. With reports received only at three month intervals, notification of shipment often is received by EPA long after the experimental pesticide has been shipped and applied.

EPA is proposing to modify the reporting requirements applicable to the permittee in order to facilitate EPA monitoring of experimental permit programs. Under the proposed regulations, permittees would be required to notify EPA at the time of shipment *unless otherwise specified* in a permit. Although this imposes an additional administrative burden on the permittee, the requirement clearly is necessary to allow EPA to undertake any monitoring deemed necessary in particular cases. Where such monitoring is deemed unnecessary, this requirement can be waived.

4. To what extent should permittees be required to supervise experimental programs? It has been EPA's policy that permittees are expected to exercise close supervision. There is, however, some ambiguity on this point in the current regulations. The proposed regulations would specifically provide that permittees must supervise the testing activities of participants, evaluate the results of testing from each site of application, and report immediately to EPA any adverse effects from use of, or exposure to, the pesticide.

Effective Date. These regulations will be effective immediately upon final promulgation, with the following exceptions:

1. Temporary permits issued under 40 CFR § 162.17 prior to the date of final promulgation of these regulations will remain in effect until their expiration date. Extensions or renewals requested after the date of publication of these proposed regulations will be granted if they are consistent with the new requirements proposed herein.

2. Experimental testing of pesticides actually being conducted by Federal and State agencies on the date of final promulgation of these regulations will be allowed to continue for the period necessary to complete such testing, e.g., remainder of the growing season or comcomparable period. Federal and State agencies planning to initiate new testing activities after the date of final promulgation of these regulation will be required to obtain experimental use permits for such activities.

3. Permit applications received after the date of publication of these proposed regulations will be processed in accordance with the new requirements proposed herein. To the extent that additional information is needed with respect to any such application, the applicant will be promptly notified. EPA will attempt to minimize the delays involved in this transition from the existing to the new regulations.

4. Section 172.10 will not be effective until regulations under Section 24(c) of FIFRA are promulgated since the scope of State Experimental Permit Programs will be determined by the definition of "special local needs" as used under Section 24(c). Further, EPA will publish in the future more specific guidance on the requirements for approval of State Experimental Permit Plans. EPA particularly solicits comments from the States indicating which States are interested in establishing a State Experimental Permit Program under Section 172.10.

Public Comment. EPA will welcome public comments on all provisions of these proposed regulations, including, in particular, the proposed requirements for submittal of information in support of applications for experimental use permits and the proposed reporting requirements, including reporting on pesticide shipments and on progress of experimental programs.

Public comment also is invited on the question of whether special procedures and/or informational requirements should be established to simplify and expedite the issuance of experimental use permits for innovative pest control methods. EPA has received suggestions that such steps be taken in order to promote innovations in pest management.

Any person may file comments on this proposal on or before April 26, 1974. Such comments should be filed in duplicate and addressed to Mrs. Betty J. Billings, Hearing Clerk, Environmental Protection Agency, Room No. 1019E, Waterside Mall, Washington, D.C. 20460. All written comments filed pursuant to this notice will be available for public inspection at the Office of the Hearing Clerk during regular business hours, 8 a.m. to 4:30 p.m. daily.

Dated: March 23, 1974.

RUSSELL E. TRAIN,
Administrator.

A new Part 172 is proposed to read as follows:

PART 172—EXPERIMENTAL USE PERMITS

§ 172.1 Definitions.

For the purposes of this part, the following terms shall be defined as listed below:

(a) The term "applicant" means any person who applies for an experimental use permit, pursuant to section 5 of the act.

(b) The term "permittee" means any applicant to whom an experimental use permit has been granted.

(c) The term "participant" means any person who supervises the use of an experimental use pesticide at the application site and any person upon whose property an experimental use pesticide is used.

(d) The term "experimental laboratory animals" means individual animals or groups of animals intended for use and used solely for laboratory research purposes, regardless of species, and does not include animals intended to be used for any food purposes, or animals intended to be kept as livestock.

(e) The term "act" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended (86 Stat. 973), and other legislation supplementary thereto and amendatory thereof.

The terms defined in the act and not explicitly defined herein, are used herein with the meanings given in the act.

§ 172.2 General.

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983), and except as herein provided by § 172.3, any person wishing to accumulate information necessary to register under section 3 and the regulations thereunder (a) for a pesticide product not registered with this Agency or (b) for a registered pesticide product for use not approved in connection with its registration under the act, may apply to the Administrator at any time for an Experimental Use Permit. Such pesticides may be sold or distributed only to the participants involved in an experimental program and are not for resale or other retail sale or other distribution.

§ 172.3 Exceptions.

No experimental use permit is required for:

(a) A substance or mixture of substances being put through screening tests in which the only purpose is to determine if it has value for specific pesticide purposes and from which the user does not intend to receive any direct benefit from pest control from its use. Such tests will be limited to laboratory and/or small plot replicated field tests less than 10 acres conducted by Federal or State agencies, colleges or universities, or commercial pesticide developers on areas leased or owned by them and continually operated as an experimental farm on a long-term basis (or, in the case of Federal agencies, used for experimental programs under written agreement with the property owner), where the crop or other test subject is destroyed or consumed only by laboratory or experimental animals or otherwise disposed of in a manner which will not endanger man or the environment.

(b) A substance or mixture of substances which under the Federal Food, Drug, and Cosmetic Act is defined as:

(1) A "new drug" (21 U.S.C. sec. 321(p) and sec. 355)

(2) A "new animal drug" (21 U.S.C. sec. 321(w) and sec. 360(b)) or

(3) An "animal feed" (21 U.S.C. sec. 321(x)) containing a "new animal drug" (21 U.S.C. sec. 360(b)).

These exemptions shall apply only insofar as the experimental uses are for drug and new animal drug purposes within the meaning of the Federal Food, Drug, and Cosmetic Act and shall not apply to pesticide experimental uses.

§ 172.4 Applications.

(a) *Time for Submission.* An application shall be submitted in triplicate to the Administrator, or his designee, as far as possible in advance of the intended date of shipment or use. Normally, processing of applications will require at least 90 days but may require a longer period, depending on the nature of the experimental program. In any event, applications will be processed as expeditiously as possible.

(b) *Contents of Application.* Each application for an experimental use permit must include the following information:

(1) *General.* (i) The purpose of the proposed testing; a description in detail of the proposed testing program; a designation of the pest organism(s) involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, and situation of application on or in which the pesticide is to be used; the States in which the proposed program will be conducted; the number of acres to be treated or included in the area of experimental use; and the proposed dates or period(s) during which the testing program is to be conducted.

(ii) The name and address of the applicant;

(iii) The name, address and telephone number of the individual(s) in the employ of the applicant who will be responsible for the day-to-day administration of the experimental use program for which a permit is being requested; and

(iv) The name, address and telephone number of any participant in the program (whether or not in the employ of the applicant), if available at the time an application is submitted or as soon thereafter as available. Any additions, deletions, or changes must be supplied promptly as they occur.

(2) *Chemical Information Required.* (i) A complete statement of composition for the formulation of the product to be tested giving the name and percentage by weight of each ingredient, active and inert.

(ii) Chemical and physical properties for each ingredient and for the formulation to be tested, including but not limited to the manufacturing processes and analytical methods suitable for the formulation.

(iii) Appropriate data on rate of decline of residues on the treated crop or environmental site.

(3) *Biological Information Required.* (i) A description and the specific results of any known prior testing of the product conducted to:

(A) Determine toxicity and effects in plants, animals, insects and other organisms at the site of application.

(B) Determine phytotoxicity, and other forms of toxicity or known adverse effects on nontarget plants, animals and insects surrounding the site of application and to determine adverse effects on the environment.

(ii) Results of toxicity tests and other data relevant to the product's potential for causing injury to the users or other persons who may be exposed, including any available epidemiological information as to man.

(4) If the experimental use pesticide is to be used in such a manner that any residue can reasonably be expected to result on or in food or feed, the applicant must:

(i) Submit evidence that a tolerance has been established for residues of the pesticide on or in any such food or feed, or

(ii) Submit a petition proposing establishment of a tolerance or exemption from the requirement of a tolerance, or

(iii) Certify that the food or feed derived from the experimental program will be destroyed or fed only to experimental laboratory animals for testing purposes, or otherwise disposed of in a manner which will not endanger man or the environment.

(5) *Other Information.* (i) The proposed method of storage and disposition of any unused experimental use pesticide and its containers.

(ii) A statement that the applicant and any participant in the experimental use program will permit, at any reasonable time, any authorized representative of the Agency, upon presentation of

official identification, entry to any premises involved in the testing program to inspect and to determine whether the provisions of the permit are being complied with as herein indicated.

(iii) Such other additional pertinent information as the Administrator may require.

§ 172.5 The Permit.

(a) *Issuance.* The Experimental Use Permit shall be issued when the Administrator determines that the conditions of section 5 of the act, and the regulations thereunder, have been met subject to such terms and conditions as the Administrator determines are warranted.

(b) *Duration.* Permits will be effective for a specified period of time, normally one year, depending upon the crop or site to be treated and the requirements of the testing program submitted. Permits and associated temporary tolerances may be renewed or extended upon request if circumstances warrant.

(c) *Limitations.* The quantity of a pesticide allowed by a permit may be less than requested if it is determined that the available information on efficacy, toxicity or other hazards, the need for data, or the adequacy of program supervision does not justify the quantity of the pesticide requested. Other limitations may also be placed in the permit if necessary for the protection of the public health and the environment.

(d) *Additions.* With respect to an experimental use pesticide containing any chemical or combination of chemicals not included in any previously registered pesticide, the Administrator may require that additional studies be conducted during the permit period to gather data to support the establishment of tolerances and/or registration. To the extent practicable, the applicant will be notified of any such requirements before or at the time an experimental use permit is issued.

§ 172.6 Labeling.

All pesticides shipped or used under an experimental use permit must be labeled with directions and conditions for use to be set by the Administrator. These labeling directions and conditions shall include:

(a) All information prescribed in 40 CFR 162.6 (Labeling) except that a registration number and previously registered use patterns shall not appear.

(b) The registration number of the establishment.

(c) Any limitations on entry of persons into treated areas.

(d) The prominent statement "For experimental use only."

(e) The Experimental Use Permit number.

(f) The statement "Not for resale."

§ 172.7 Program Surveillance and Reporting of Data.

(a) The permittee shall supervise the test program among the participants and evaluate the results of testing from each site of application. It will further be the responsibility of the permittee to report immediately to the Administrator, or to any person designated by him, any adverse effects from use of, or exposure to, the pesticide.

(b) A permittee shall submit the following reports during the experimental program.

(1) The following information must be submitted to the Administrator or his designee at the time of shipment, unless otherwise specified.

(i) Name and address of the shipper and place or places from which shipped.

(ii) Name and address of consignee.

(iii) Amount of each shipment.

(2) Reports will be required every three months, unless otherwise directed, which shall include the following:

(i) Quantity of the pesticide shipped and used during the reporting period;

(ii) List of States into which shipments were made;

(iii) A summary of the progress made and data obtained during the report period.

(3) A final report shall be submitted within 90 days after the expiration of the permit and shall include:

(i) All data gathered during the testing program,

(ii) Disposition of any unused pesticide,

(iii) Disposition of food or feed.

(4) In the case of any animals or birds that receive a direct treatment or application of any experimental use pesticide, the name and location of the packing plant where the animals will be processed shall be sent to Animal & Plant Health Inspection Service, USDA, Washington, D.C. 20250, at least ten days before the animals are to be shipped for slaughter. This requirement may be waived, on request, by USDA. These provisions do not exempt treated food-producing animals and their products from compliance with other applicable inspection requirements.

(5) Failure to submit required reports will be considered just cause for revocation of the permit.

§ 172.8 Renewals.

Application for renewal of experimental use permits and temporary tolerances, to provide for additional testing, should be submitted prior to expiration of the permit. Requirements for renewals are the same as for applications under § 172.4, except that information previously submitted may be incorporated by reference.

§ 172.9 Refusals to Issue and Revocation.

(a) At any time that the Administrator determines that an experimental use permit is not justified, or that the issuance of such a permit would cause unreasonable adverse effects on the environment, or for any other reason, he shall notify the applicant in writing.

(b) The Administrator may revoke an experimental use permit if he finds that its terms or conditions are being violated or that continued use under a permit could cause unreasonable adverse effects on the environment, or if new evidence is obtained which demonstrates that a revision of the temporary tolerance is needed. The Administrator will notify the permittee in writing. The permittee must notify all participants. The revocation of a permit for violative cause shall not preclude the Administrator from initiating civil or criminal sanctions for the violations of the permit conditions as authorized.

(c) *Hearing.* In the event that an applicant wishes to contest the refusal to issue an experimental use permit or a permittee wishes to contest the revocation of any such permit, he shall, within ten days after notification of such refusal or revocation, file a written response with the Administrator and a request for an opportunity to confer with the Administrator or his designee. Within 10 days after such conference, the applicant or permittee will be notified as to whether the Administrator's initial decision will be reconsidered.

§ 172.10 State Issuance of Permits.

(a) A State may issue an experimental use permit, pursuant to section 5 of the act, for the use of a pesticide for the purpose of accumulating information necessary to register a pesticide formulated solely for the distribution and use within that State to meet special local needs of that State if:

(1) The substance or mixture of substances has not been cancelled, suspended, or denied registration or the subject of a Federal experimental use permit.

(2) A State plan for issuing such permits has been submitted and approved in accordance with regulations to be prescribed by the Administrator.

§ 172.11 Publication.

At any time an experimental use permit is granted by the Administrator, he shall give prompt notice in the Federal Register. The Administrator, in his discretion, may publish notice of an application for an experimental use permit in the Federal Register prior to the granting or denying of the permit, with opportunity for comment by interested persons.

[FR Doc.74-7240 Filed 3-26-74;10:20 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19816, RM-1851, RM-1874]

EDUCATIONAL BROADCASTING

Order Extending Time for Filing Reply Comments

In the matter of ascertainment of community problems by educational broadcast applicants; amendment of Section IV (Statement of Program Service of FCC Broadcast Application Forms 340 and 342 (noncommercial Educational Broadcast Applications)); and Formulation of rules and policies relating to the renewal of educational broadcasting licenses

1. On September 6, 1973, the Commission adopted a notice of proposed rulemaking in the above-entitled proceeding.

Publication was given in the FEDERAL REGISTER on September 19, 1973, 38 FR 26212 (Sept. 19, 1973). The date for filing comments has expired and the date for filing reply comments is presently March 22, 1974.

2. On March 19, 1974, the Public Broadcasting Service (PBS) requested that the time for filing reply comments be extended to and including April 1, 1974. It states that the comments cover a broad range of views and positions which must be reviewed and analyzed in order for it to prepare responsive reply comments. It therefore states a short extension is needed in order to complete this task and to coordinate the reply comments between counsel and PBS.

3. It appears that the requested extension is warranted. Accordingly, *It is ordered*, That the date for filing reply comments is extended to and including April 1, 1974.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Adopted: March 20, 1974.

Released: March 21, 1974.

[SEAL] MARTIN I. LEVY,
Acting Chief,
Broadcast Bureau.

[FR Doc.74-7062 Filed 3-26-74;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 563]

[No. 74-202]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Proposal on Loans in Excess of 90 Percent of Value

MARCH 19, 1974.

The Federal Home Loan Bank Board considers it advisable to propose to amend Part 563 of the rules and regulations for insurance of accounts (12 CFR Part 563) by adding a new section, § 563.9-7, which would require insured institutions making single-family-dwelling loans exceeding 90 percent of value either to establish a special reserve or to secure private mortgage insurance of a specified amount from an insurer approved by the Federal Home Loan Mortgage Corporation.

At present, only Federally-chartered associations are required by the Board to have the protection of a special reserve or approved private mortgage insurance for single-family-dwelling loans in excess of 90 percent of value, as provided by § 545.6-1(a)(5)(iv) of the rules and regulations for the Federal Savings and Loan System. The purpose of the proposed amendment is to extend this protection to such loans made by State-chartered, Federally-insured institutions. Section 403(b) of the National Housing Act of 1934, as amended, states that insured institutions "will provide adequate reserves satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation * * *" Under this statutory authority, the Board is empowered to determine that investments by insured institutions in the higher-risk, low-equity single-family-dwelling-loan category should be protected by means of a special reserve or approved insurance coverage which in the Board's view will serve as an adequate substitute for such a reserve. The Board therefore proposes to incorporate the provisions of § 545.6-1(a)(5)(iv) for Federal associations into the regulations for insured institutions in Part 563.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563 by adding a new § 563.9-7 to read as set forth below.

Interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by April 30, 1974, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 563.9-7 Loans in excess of 90 percent of value.

(a) An insured institution which is authorized to make loans on the security of "single-family dwellings" (as defined in § 541.10 of this chapter) in excess of 90 percent of value of such real estate may do so only if:

(1) The association establishes and maintains a specific reserve with respect to such loan equal to one percent of the unpaid principal balance thereof until the unpaid principal balance has been reduced to an amount not in excess of 90 percent of the value or purchase price of the real estate security, whichever is less, determined at the time the loan was made; or

(2) That as long as the unpaid balance of such a loan is in excess of an amount equal to 90 percent of the value or purchase price of the real estate security, whichever is less, determined at the time the loan was made, that portion of the unpaid balance of such loan which is in excess of an amount equal to 80 percent of such value or purchase price of the real estate security is guaranteed or insured by a mortgage insurance company which has been determined to be a "qualified private insurer" by the Federal Home Loan Mortgage Corporation.

(b) This section does not apply to single-family dwelling loans to facilitate the sale of real estate owned described in § 561.15(d) of this subchapter.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[FR Doc.74-7067 Filed 3-27-74;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 2, 154, 157]

[Docket No. R-389-B]

JUST AND REASONABLE NATIONAL RATES FOR FUTURE SALES OF NATURAL GAS FROM WELLS COMMENCED ON OR AFTER JANUARY 1, 1973

Issuance of Revised Staff Nationwide Cost Study and Staff Study of American Gas Association Reserve Additions

MARCH 21, 1974.

Notice is hereby given, pursuant to the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (1970),[1] and sections 4, 5, 7, 8, 14, 15, and 16 of the Natural Gas Act, 15 U.S.C. § 717, *et seq.* (1970),[2] that the Commission has determined that the attached Staff reports should be made a part of the record in this proceeding, and that all parties to this proceeding should be given an opportunity to comment upon these reports since information contained in the reports may be used by the Commission in arriving at its decision in this proceeding. The reports attached to this notice [2a] are a revision to Appendix B [2a] that was attached to the "Notice Of Proposed Rulemaking And Order Prescribing Procedures" which was issued in this proceeding on April 11, 1973,[3] and new Appendix B-1,[2a] which is a Staff study of the annual nonassociated natural gas reserve additions as reported by the American Gas Association (AGA) for 1971 and 1972.

Appendix B to the notice of proposed rulemaking has been revised to reflect 1972 drilling cost data as reported by the Joint Association Survey of the U.S. Oil and Gas Producing Industry (1972 JAS) and 1972 nonassociated natural gas reserve additions as reported by AGA. The original Appendix B has also been revised to reflect the utilization of a 10.5 year investment life for an updated test period of seven years (1966-1972) and a test period based upon the average of the 11, 16, and 26 year average productivities, and to set forth the estimated costs associated with a ten-year test period (1963-1972) and a four-year test period (1969-1972).[4] These cost

[1] 60 Stat. 237, 918, 993 (1946); 61 Stat. 37, 201 (1947); 62 Stat. 99 (1948); 80 Stat. 250 (1966).

[2] 52 Stat. 822, 823, 824, 825, 829, 830 (1938); 56 Stat. 83, 84 (1942); 61 Stat. 459 (1947); 76 Stat. 72 (1972); 15 U.S.C. §§ 717c, 717d, 717f, 717g, 717m, 717n, 717o (1970).

[2a] Revised Appendix B and Appendix B-1 filed as part of the original document.

[3] 38 FR10014 (1973).

[4] The seven-year and the average of the 11, 16, and 26 year productivities correspond to the six-year and the average of the 10, 15, and 25 year productivities presented in the original Appendix B with the addition of productivity data for 1972.

studies were prepared by the Commission's Staff for comparative and illustrative purposes only; they do not necessarily represent a position of the Commission Staff in these proceedings.

Appendix B–1 attached to this notice is a Staff report prepared by the Bureau of Natural Gas and the Office of Economics entitled "Report On Indicated Disparity In Reporting Of Offshore Louisiana Non-Associated Natural Gas Reserves."

This report shows an indicated disparity between the nonassociated natural gas reserve additions reported by AGA for the years 1971 and 1972 and the reserve additions for selected producible gas leases in the Federal domain offshore of Southern Louisiana as determined by the Commission Staff. Because reserve additions are a critical element in the determination of productivity factors, and, in turn, the cost of new natural gas supplies, we are requesting all parties to this proceeding to comment upon the Staff Report and the utilization of reserve additions reported by AGA in the costing of new natural gas supplies and to respond to the following specific questions:

1. In view of the apparent disparity between the nonassociated natural gas reserves as reported by AGA and the volume of reserve additions determined in the Staff Report, should the reserve additions for the most recent years, *i.e.*, 1971 and 1972, be used in determining productivity factors to be considered in this proceeding?

2. By what methods, if any, can the reported reserve additions for 1971 and 1972 be appropriately adjusted in order to derive a reasonably reliable productivity factor for adoption in this proceeding?

3. Should the nonassociated natural gas reserve additions as reported by AGA be utilized in the calculation of a productivity factor for the costing of new natural gas supplies, and, if not, what alternative methods for calculating a productivity factor would offer greater reliability?

The Staff's current findings indicate that a disparity of approximately 1.7 trillion cubic feet (Tcf) may be due to a reporting lag which will be corrected in future years. The following statement of reporting procedures utilized by AGA for determining and reporting annual reserve additions underscores the fact that full reporting of reserve additions is deferred until the base information for determining the volume of reserve additions is furnished to the relevant AGA subcommittee:

> Subcommittees (which are responsible for the determination of reserves) are not necessarily aware of or have access to the subsurface information for all new discoveries at the time reserve estimates are prepared. This is especially true if a discovery is made late in the year for which a report is being prepared or when competitive situations relating to open acreage dictate that the subsurface information be held proprietary. In such cases new proved reserves are reported * * * as revisions * * * for the year in which the subsurface information becomes available.

[3] 38 FR 10014 (1973).

Reserve Of Crude Oil, Natural Gas Liquids, And Natural Gas In The United States And Canad.. And United States Productive Capacity As Of December 31, 1971, Volume 26, p. 103, published jointly by the American Gas Association, American Petroleum Institute, and the Canadian Petroleum Institute (May 1972). This same statement appeared in the AGA report for 1972 reserve additions Volume 27, p. 103 (May 1973).[5]

These statements suggest that the reserve additions reported by AGA may not be all inclusive, but may, in fact, not include certain reserves actually discovered in a given reporting year when "subsurface information" relating to those discoveries is not disclosed to the appropriate AGA subcommittee. If, in fact, all reserve additions occurring with a given reporting year have not been reported to AGA, the productivity factor for that year may be understated. Thus, we find that it is essential that the parties and respondents to this proceeding be given an opportunity to comment upon the Staff Report pertaining to reserve additions are reported by AGA so that the Commission will have a complete record upon which to base its decision in this proceeding.

In addition to the issues raised by Appendix B–1 noted above, Revised Appendix B suggest other issues concerning which the Commission desires evidence be submitted, by way of comment and cross-comment, before reaching a decision herein. Although all issues are open to comment, specific comment is invited upon the following:

1. Should the rate of return utilized in the pricing of new gas supplies be determined on the basis of the marginal rate of return necessary to attract new venture capital? What is the marginal rate of return necessary to attract new venture capital to the development of new supplies of natural gas? What rates of return are currently realizable in alternate new venture capital investment opportunities?

2. Should the principles of full cost accounting be applied to producer ratemaking, thereby including dry hole costs, other exploration costs, and exploration overhead in the rate base, or should such expenditures still be classified as current expenses for ratemaking purposed? What rate of return should be utilized if full cost account is utilized to determine producer rates?

3. Should estimation of new gas costs be related to the recent cost experience of the industry, or should estimation be based upon all data, remote and recent? What time series is appropriate? Is current data reasonably reliable, or is adjustment necessary to render such data reasonably reliable? If adjustment is necessary, upon what basis should the adjustments be made?

[5] Prior to the AGA report for 1971 reserve additions, the following statement appeared in the annual AGA report on reserve additions:

> New discoveries seldom are delineated or fully developed during the year of discovery. Therefore, the year-end reserves estimates of discoveries generally represent only a part of reserves that ultimately will be assigned.

E.g., Volume 25, p. 103 (May 1971) (1970 AGA).

4. Should estimation of new gas costs be based, in whole or in part, upon statistical trending of historical cost data, and specifically do any of the data series for drilling costs, dry hole costs, lease acquisition costs, cost of producing wells, exploratory overhead, other exploration costs, production operating expense, and liquid credits lend themselves to trending by statistical analysis? What time series should form the basis for statistical trending?

5. As a substantial portion of the new natural gas supplies for the United States in future years will come from wells drilled to depths of 15,000 feet or more below the surface in the onshore areas and from offshore areas where the water depths will be increasingly greater than those being explored today, should some additional cost allowance be made for these drilling efforts? If so, upon what factual basis can a reasonable allowance be based for these projected additional costs and what amount (cents per Mcf) should be provided as the allowances for deeper drilling (in both the onshore and offshore areas) and deeper water depths in the offshore areas?

6. If non-cost factors are to be considered, what factors should be considered and how should they be quantified in computing a rate for new natural gas supplies?

We have concluded that the information and data contained in the attached Staff reports (which are denoted as Revised Appendix B and Appendix B–1) and the data and information contained in the comments of the parties submitted in response to these Staff reports and the specific questions enumerated in this notice may be material to the Commission's resolution of the issues raised in this proceeding, and that the public interest requires that all parties and respondents to this proceeding be given an opportunity to comment upon the attached Staff reports and the specific questions enumerated in this notice. The public interest requires that any interested persons, not now a party or respondent to this proceeding, be given an opportunity to become a party to this proceeding and comment upon the attached Staff reports, the specific questions enumerated in this notice, and the comments of all other parties to this proceeding which are submitted in response to this notice. Those interested persons desiring to become a party to this proceeeding, who are not already a party or respondent to this proceeding, shall be required to accept the record of this proceeding as it is presently constituted and to limit their comments and cross-comments to the matters set forth in this notice and the attached Staff reports and the comments submitted in response to this notice.

It is also in the public interest that expedited procedures for the filing comments and cross-comments be adopted in this notice. To that end, we shall require that all interested persons, who are not now either a party or respondent to this proceeding, to notify the Secretary of the Commission of their desire to become a party to this proceeding on or before March 26, 1974, and the Secretary shall serve a revised service list for this proceeding upon all parties of record as of March 27, 1974, on or before April 1, 1974. Initial written comments pertaining to

this notice and the attached Staff reports are to be filed on or before April 22, 1974, and responses to the initial written comments are to be filed on or before May 13, 1974.

The Commission finds: (1) The public interest and the orderly and effective administration of the Natural Gas Act requires that all interested persons, who are not now either a party or respondent to this proceeding, be given an opportunity to became a party to this proceeding subject to the condition that they shall accept the record of the proceeding as such record is presently constituted and limit their comments to the matters raised in this notice, the attached Staff reports, and the comments submitted in response to this notice.

(2) The public interest requires that the attached Staff reports (which are denoted as Revised Appendix B and Appendix B–1) be made a part of the record to this proceeding and that all parties to this proceeding be given an opportunity to comment upon the contents of Revised Appendix B and Appendix B–1 and the specific questions enumerated in this notice.

(3) The public interest requires that the Commission provide for the filing of comments upon Revised Appendix B and Appendix B–1 and the specific questions enumerated in his notice on an expedited basis so that this proceeding will not be unduly delayed.

The Commission orders: (A) All persons, who are either a respondent to or a party to this proceeding, may file written comments pertaining to the attached Staff reports (which are denoted as Revised Appendix B and Appendix B–1) on or before April 22, 1974, with the Secretary of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Replies to the written comments may be filed with the Secretary of the Commission on or before May 13, 1974. The initial comments and replies thereto shall state the name, title, mailing address, and telephone number of the person or persons to whom communications concerning this matter should be addressed. An original and fourteen (14) conformed copies of such comments and replies to such initial comments shall be filed with the Commission, and copies of the initial comments and replies thereto shall be served upon all persons who are parties to or respondents to this proceeding.

(B) All comments and replies thereto filed in response to this notice shall be under oath, acknowledged by a notary public or comparable official, as follows:

---------- being duly
(Name)

sworn, deposes and says that he is (title and organization, if filing is in a representative capacity) that he is authorized to verify and file this document, that he has examined the statement contained in the initial comments or replies thereto, and that all such statements are true and correct to the best of his knowledge, information, and belief. The persons preparing the written comments and replies thereto shall submit such filings on letter-size paper (8″ by 10½″ or 8½″ by 11″) in accordance with the Rules of Practice and Procedure of the Federal Power Commission.

(C) All interested persons, who are not now either a party or respondent to this proceeding, may become a party to this proceeding by filing a notice of intention to respond to this notice with the Secretary of the Commission on or before March 26, 1974. Such persons shall accept the record of this proceeding as it is presently constituted and shall limit their comments and replies to the comments of the other parties and respondents to the matter raised in this notice, the attached Staff reports, and the comments submitted in response to this notice.

(D) The Secretary of the Commission shall serve a revised service list of all parties of record as of March 27, 1974, upon all such parties and respondents to this proceeding on or before April 1, 1974, by United States mail.

(E) The Secretary of the Commission shall cause prompt publication of this notice and the attached Staff reports in the FEDERAL REGISTER and shall serve this notice and the attached Staff reports upon all parties and respondents to this proceeding.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–7000 Filed 3–26–74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC–8273, File No. S7–518]

CERTAIN JOINT TRANSACTIONS INVOLVING REGISTERED INVESTMENT COMPANIES

Exemption From Application Requirements

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of Rule 17d–1 [17 CFR 270.17d–1] under the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a–1 et seq.]. The proposed revision would enable certain affiliated companies and certain persons affiliated with such companies to participate in joint transactions with registered investment companies and companies controlled by registered investment companies without an order of the Commission. It would also clarify the present rule to remove any doubt as to whether certain SBIC stock option plans may become operative without an order of the Commission. The proposed amendment would be adopted pursuant to the authority in sections 17(d), 6(c) and 38(a) of the Act [15 U.S.C. 80a–17(d), 80a–6(c), 80a–37(a)].

Section 17(d) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company * * * or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant.

Rule 17d–1(a) prohibits all such affiliated persons, and principal underwriters, acting as principal, from participating in or effecting any—

Transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant * * * unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted * * *

Section 6(c) of the Act provides that the Commission, by rule, regulation or order, may exempt any person or transaction, or any class of persons or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 38(a) of the Act authorizes the Commission to issue and amend such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

Proposed New Subparagraph (4) of Rule 17d–1(d)—SBIC Stock Option Plans. Paragraph (c) of Rule 17d–1 presently defines "joint enterprise or other joint arrangement or profit-sharing plan" for purposes of Rule 17d–1 as, *inter alia*, any "stock option or stock purchase plan." In *The National Association of Small Business Investment Companies* (Investment Company Act Release No. 6523, May 14, 1971) the Commission exempted from the provisions of Sections 18, 19, and 23 of the Act [15 U.S.C. 80a–18, 80a–19, 80a–23], subject to conditions for the protection of investors, the issuance by registered small business investment companies ("SBICs") of stock options which qualify under section 422 of the Internal Revenue Code and under appropriate SBA regulations to officers, directors and employees of SBICs. It appears, however, that a question remains as to whether or not an application is needed under Rule 17d–1 for an order of the Commission permitting the issuance of such qualified stock option plans. In order to remove any doubt in this regard, proposed new subparagraph (4) of Rule 17d–1(d) would permit registered SBICs to issue qualified stock options to their officers, directors and employees without a prior Commission order.

Proposed New Subparagraph (5) of Rule 17d–1(d)—Joint Transactions with Certain Affiliated Persons. Proposed new

subparagraph (5) would provide an exemption from the application provisions of Rule 17d–1 for joint transactions or arrangements in which any registered investment company or a company controlled by such registered investment company is a participant, and in which a company affiliated with such registered investment company or an affiliated person of such affiliated company is also a participant, provided that neither certain affiliated persons nor the principal underwriter of the registered investment company participate or have a financial interest in the transaction. The proposed exemption would be available in the case of SBICs, venture capital and other registered investment companies in like manner.

In proposing new subparagraph (5) of Rule 17d–1 the Commission believes that when the persons designated do not participate or have a financial interest in a joint transaction, there is little likelihood that participation by registered investment companies, or controlled companies thereof, in joint transactions with other affiliated persons, or affiliated persons of such other affiliated persons, will result in unfair or disadvantageous treatment to the investment companies or their controlled companies.

Proposed new subparagraph (5) would not, however, exempt from the application requirements of the rule those joint transactions in which an investment company or a company controlled by such company commits in excess of 5 percent of its assets. This limitation should further protect against the possibility that exempted transactions would occur when a direct association with the investment company exists. The 5 percent limitation is consistent with the limitation already imposed by Section 5 of the Act [15 U.S.C. 80a–5] for diversified companies [1] and it is also consistent with the 5 percent limitation contained in Section 851 of the Internal Revenue Code [26 U.S.C. 851], as amended, under which the vast majority of investment companies qualify for "pass through" tax treatment.

Apart from the provisions of the proposed amendments, it should be noted that the anti-fraud provisions of the federal securities laws are also applicable to joint transactions in which registered investment companies or their controlled companies participate. In particular, Rule 10b–5 under the Securities Exchange Act of 1934 [17 CFR 240.10b–5] prohibits the employment of manipulative and deceptive devices in connection with the purchase or sale of any security. That prohibition would be applicable even where the exemption afforded by the proposed amendment would be available. Furthermore, the officers, directors and investment advisers of registered investment companies will remain subject to section 36(a) [15 U.S.C. 80a–35(a) Sec. 20, Pub. L. 91–547, 84 Stat. 1428] of the Act with respect to joint transactions exempted by the proposed subparagraph.

Proposed new subparagraph (5) of Rule 17d–1(d) also empowers the Commission to require the submission of reports of joint transactions effected pursuant to the proposed new subparagraph. The Commission intends shortly to publish a proposal for the implementation of this reporting requirement.

Illustrative of the type of joint transaction whtich would be exemp under proposed subparagraph (5), are the following:

1. Frequently, a company is an affiliated person of a registered investment company because 5 percent or more of the former's common stock is in the portfolio of the registered investment company. In addition, an officer or director of the affiliated portfolio company may own some of the affiliated portfolio company's common stock, or another individual may own 5 percent or more of the portfolio company's common stock. As a result, each of these individual owners of the portfolio company's common stock is an affiliated person of an affiliated person of the registered investment company. If the portfolio company reorganizes its capital structure, proposed subparagraph (5) would eliminate the need for an application under Rule 17d–1 if certain specified persons do not also participate or have a financial interest in the transaction. The exemption would be available even though such a reorganization would involve participation by an affiliated person of an affiliated person of the registered investment company in a joint enterprise (namely the exchange of securities of the portfolio company for new securities thereof) in which the registered investment company is also a participant.

2. A somewhat similar situation arises when an affiliated portfolio company of the registered investment company is to be merged with a company controlled by the registered investment company. Frequently, an affiliated person of the affiliated portfolio company (e.g., an officer, director or 5 percent stockholder) participates or has a financial interest in the joint transaction. Under proposed new subparagraph (5), an application for an order of the Commission to permit this transaction would not be required, provided that the persons specified in proposed subparagraph (5) do not participate or have a financial interest in the joint transaction.

3. Where two registered investment companies each own 5 percent or more of the common stock of the same portfolio company, each is an affiliated person of an affiliated person of the other. Under proposed new subparagraph (5) it would not be necessary to file an application under Rule 17d–1 where either or both of the investment companies desire to increase or decrease their holdings of such security or to exchange securities with the portfolio company, provided that the persons specified in proposed subparagraph (5) do not participate or have a financial interest in the joint transaction.

Accordingly, the Securities and Exchange Commission, pursuant to authority given it in Sections 6(c), 17(d), and 38(a) of the Investment Company Act of 1940, hereby proposes to amend Section 270.17d–1(d) of Chapter II of Title 17 of the Code of Federal Regulations by adding new subparagraphs (4) and (5). The amendment starts with (4) below; the preliminary language exists in Rule 17d–1 and has been included only for purposes of readability.

§ 270.17d–1 Applications Regarding Joint Enterprises or Arrangements and Certain Profit-Sharing Plans.

* * * * *

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

* * * * *

(4) The issuance by a registered investment company which is licensed by the Small Business Administration ("SBA") pursuant to the Small Business Investment Act of 1958 of stock options which qualify under Section 422 of the Internal Revenue Code, as amended, and which conform to § 107.805(b) of Chapter I of Title 13 of the Code of Federal Regulations (revised as of January 1, 1972), as amended in 37 FR 3950 and 37 FR 8865, adopted by the SBA, effective August 1, 1972.

(5)(i) Any joint enterprise or other joint arrangement or profit-sharing plan other than a stock option or stock purchase plan (hereinafter referred to as a "joint enterprise") in which a registered investment company or a company controlled by such a company, is a participant, and in which a company which is an affiliated person of such registered investment company or an affiliated person of such a person is also a participant, provided that no person who is included in items (A) through (E) below is, was, or proposes to be, a participant in the joint enterprise in any manner, including participation through a financial interest, direct or indirect, in any person (except the registered investment company) who is, was or will be a participant in the joint enterprise, and further provided that in such joint enterprise neither the investment company nor a company controlled by such company commits in excess of 5 percent of its assets, and further provided that reports containing pertinent details of the joint enterprise shall be made at such time, on such forms and by such persons as the Commission may from time to time prescribe.

(A) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the registered investment company,

(B) A person directly or indirectly controlling the registered investment company,

(C) A person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of the registered investment company,

(D) A person directly or indirectly under common control with the registered

[1] Section 5(b)(1) of the Act in effect requires a diversified management company to invest at least 75 percent of the value of its total assets in cash and cash items, government securities, securities of other investment companies and other securities "limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets" of such company.

investment company, except a person who, if it were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company, or

(E) An affiliated person of any of the foregoing, except (*1*) the registered investment company, or (*2*) a person who (*i*) if it were not directly or indirectly controlled by the registered investment company, or (*ii*) if 5 per centum or more of its outstanding voting securities were not directly or indirectly owned, controlled, or held with power to vote by the registered investment company, would not be an affiliated person of a person described in item (B) or (C) hereinabove.

(ii) For the purpose of determining whether, pursuant to this subparagraph (5), an application need be filed pursuant to this section, the term "financial interest" as used herein shall not include (A) any interest through ownership of securities issued by the registered investment company; (B) any interest of a wholly-owned subsidiary of the registered investment company; (C) usual and ordinary fees for services as a director; (D) an interest of a nonexecutive employee; (E) an interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person; (F) an interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of a company which is a participant in the joint transaction; or (G) an interest acquired in a transaction described in paragraph (d)(3) hereof.

(Sec. 6(c), 17(d), 38(a); 54 Stat. 800, 815, 841; 15 U.S.C. 80a-6(c), 80a-17(d), 80a-37(a)).

All interested persons are invited to submit their written views and comments on the proposed amendment to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before May 10, 1974. All communications in this regard should refer to File No. S7-518, and will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

MARCH 14, 1974.

[FR Doc.74-7042 Filed 3-26-74;8:45 am]

FEDERAL ENERGY OFFICE

[10 CFR Part 212]

PUERTO RICO

Further Notice of Proposed Price Regulations and Public Hearing

Notice is hereby given that the public hearing in this proceeding, announced by the Federal Energy Office on March 18, 1974 (39 FR 10454, March 20, 1974) will be held beginning at 10:00 a.m., on Monday, April 8, 1974 and Tuesday, April 9, 1974, at the Governmental Building-Las Minnellas, Santurce, Puerto Rico, in the Public Hearing Room, eighth floor, to receive comments from interested persons on the matters set forth in the initial notice of this proceeding.

Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to the Executive Secretariat of the Federal Energy Office, and must be received before 5:30 p.m., e.d.s.t., Monday, April 1, 1974. Such a request may be delivered by hand to Room 3309, New Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, or may be submitted by Telex, 710-822-0155. The request should identify the individual who would testify, describe the interest concerned, state, if appropriate, why the individual is a proper representative of a group or class of persons which has an interest, and provide a telephone number where the individual may be contacted through April 2, 1974.

Each person selected to be heard will be so notified by the Federal Energy Office before 5:30 p.m., e.d.s.t., April 2, 1974.

The Federal Energy Office reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

A Federal Energy Office official will preside at the hearing. It will not be a judicial or evidentiary type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the Federal Energy Office with respect to the subject matter of the hearing will be based on all information available to the Federal Energy Office, from whatever source received. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to the Executive Secretariat before 5:30 p.m., e.d.s.t., April 4, 1974. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether a question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be made available for inspection at the Public Reference Facility of the Federal Energy Office, Room 3130, New Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:30 a.m. and 5:30 p.m. Monday through Friday. Anyone may buy a copy of the transcript from the reporter.

This public hearing will be conducted under the authority of § 5 of the Emergency Petroleum Allocation Act and Section 207(c) of the Economic Stabilization Act of 1970, as amended.

The Federal Energy Office is inviting public participation in the form of written submissions as well as oral presentations. All written submissions received by the Federal Energy Office not later than 5:30 p.m., e.d.s.t., Thursday, April 4, 1974, will be considered by the Federal Energy Office before it makes its determination in this proceeding.

Fifteen copies of all written submissions should be sent to the Federal Energy Office in Washington, D.C. All submissions should be clearly identified on the outside of the envelope as "Puerto Rican Price Regulation Comments." If submitted by mail they should be addressed to the Federal Energy Office, Executive Secretariat, Box AC, Washington, D.C. 20461. If submitted by hand, they should be delivered to The Federal Energy Office, Executive Secretariat, Room 3309, The New Post Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. Fifteen copies of all written submissions should also be submitted to the Federal Energy Office in Puerto Rico.

They may be submitted by mail or delivered by hand to the Federal Energy Office, c/o Officina Sobre Asuntos de Combustibles Derivados del Petroleo, Room 804, Governmental Building-Las Minnellas, Santurce, Puerto Rico, 00910.

Any information or data considered by the person furnishing it to be confidential must be so indicated and submitted in writing, one copy only. The Federal Energy Office reserves the right to determine the confidential status of the information or data and to treat it accordingly.

Issued in Washington, D.C. March 26, 1974.

WILLIAM N. WALKER,
General Counsel,
Federal Energy Office.

[FR Doc.74-7276 Filed 3-26-74;12:06 pm]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD

Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session in the Pentagon, Washington, D.C., April 18 and 19, 1974.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

MARCH 22, 1974.

[FR Doc.74-7019 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

DRAFT SUPPLEMENT TO THE FISCAL YEAR 1975 PROGRAM STATEMENT

Notice of Public Meeting

Notice of a public information meeting is hereby given by the Bonneville Power Administration to solicit public comments on a Draft Facility Location Supplement to BPA's Fiscal Year 1975 Program Statement. This Supplement describes the environmental impact of constructing a new substation near the town of Sappho located in Clallam County, Washington.

The purpose of this public information meeting is to present to the public alternative facility or site locations relative to the above proposal and to solicit comments from the public with respect to the environmental impact of the proposal.

The meeting on the proposed substation will be held on April 29, 1974, at 1 p.m., in the Clallam County PUD Office, Port Angeles, Washington.

Oral and written statements will be accepted at this meeting. Members of the public who wish to be given preference in the order of appearance should contact the Seattle Area Manager, 415—1st Avenue North, Room 250, Seattle, Washington 98109, Area Code (206) 284-6820. However, all those present wishing to comment will be allowed to do so in the time remaining. Those wishing to comment orally are encouraged but not required to submit a written copy of their statement. All comments, whether oral or written, will be given consideration. Because of the technical nature of the subject matter, members of the public and other reviewers are also encouraged to familiarize themselves with the Draft Facility Location Supplement on the proposed Sappho Substation before commenting.

Requests for copies of the draft supplement on the above proposal or any questions regarding this meeting should be forwarded to the Seattle Area Manager, 415—1st Avenue North, Room 250, Seattle, Washington 98109.

Written comments on the Draft Facility Location Supplements have been invited and will be accepted on or before Monday, April 29, 1974. Copies of the draft supplement are also available for inspection at the above Area Office or at the headquarters building, Bonneville Power Administration, 1002 NE. Holladay Street, Portland, Oregon 97232.

Additional or clarifying information may be obtained by writing or calling the Environmental Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; Area Code (503) 234-3361, extension 5136.

WILLIAM H. CLAGETT,
Assistant Administrator.

MARCH 21, 1974.

[FR Doc.74-6898 Filed 3-26-74;8:45 am]

Bureau of Land Management

[N-219]

NEVADA

Notice of Proposed Withdrawal and Reservation of Lands

MARCH 19, 1974.

The Bureau of Sport Fisheries and Wildlife have filed the above application for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not the mineral leasing laws.

The applicant desires the land as an addition to the existing Desert National Wildlife Range.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Room 3008 Federal Building, 300 Booth Street, Reno, Nevada 89502.

The Department's regulations (43 CFR § 2351.4(c)), provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN

T. 8 S., R. 61 E., (partially unsurveyed)
Secs. 8 and 9, all;
Sec. 10, W½, W½E½;
Sec. 14, W½SW¼SW¼;
Sec. 15, NW¼NE¼NE¼, S½NE¼NE¼, S½NE¼, NW¼NE¼, NW¼, S½;
Secs. 16 to 22, incl., all;
Sec. 23, W½NW¼, S½SE¼NW¼, NW¼SE¼NW¼, SW¼;
Sec. 25, SW¼NW¼, NW¼SW¼, S½SW¼;
Secs. 26 to 35, incl., all;
Sec. 36, NW¼NE¼, S½NE¼, NW¼, S½.

T. 8 S., R. 62 E.,
Sec. 31, lots 3, 4, SE¼SW¼.

T. 9 S., R. 62 E.,
Secs. 10, 11, 14, 15, 22, 23, 26, 27, 34 and 35, those portions lying between the east boundary of the existing Desert National Wildlife Range (D.N.W.R.) and the westerly line of the right-of-way of U.S. Highway 93.

T. 10 S., R. 62 E.,
Secs. 1, 2, 12, 13 and 24 those portions lying west of the westerly line of the right-of-way of Highway 93.
Sec. 11, all;
Sec. 14, NE¼, NE¼NW¼, SW¼SE¼;
Sec. 23, SE¼NE¼, W½NE¼, E½SE¼;
Sec. 25, SW¼SW¼;
Sec. 36, that portion lying between the east boundary of the existing D.N.W.R. and the westerly line of right-of-way of U.S. Highway 93.

T. 11 S., R. 62 E.,
Sec. 1, that portion lying between the east boundary of the existing D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93.

T. 11 S., R. 63 E.,
Secs. 18, 19, 30 and 31, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93.

T. 12 S., R. 63 E.,
Secs. 6, 7, 18, 19, 29, 30 and 32, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Sec. 31, all.

T. 13 S., R. 63 E.,
Secs. 5, 8, 17, 20, 28, 29 and 33, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Secs. 6, 7, 18, 19, 30, 31 and 32, all.

T. 13½ S., R. 63 E., (unsurveyed)
Secs. 31 and 32, all;
Sec. 33, that portion lying west of the westerly line of the right-of-way of U.S. Highway 93.
T. 14 S., R. 63 E., (unsurveyed)
Secs. 4, 9, 16, 21, 28 and 33, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Secs. 5 to 8, incl., 17 to 20, incl., 29 to 32, incl., all.
T. 15 S., R. 63 E.,
Secs. 3, 4, 10, 15, 22, 27 and 34, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Secs. 5 to 9, incl., 16 to 21, incl., 28 to 33, incl., all.
T. 16 S., R. 63 E.,
Secs. 3, 4, 9, 16, 20, 21, 29 and 32, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Secs. 5 to 8, incl., 17, 18, 19, 30 and 31, all.
T. 17 S., R. 63 E.,
Secs. 7, 8, 18, 19, 30 and 31, all;
Secs. 9, 16, 17 and 20, those portions lying west of the westerly line of the right-of-way of U.S. Highway 93;
Sec. 29, N½, that portion lying west of the westerly line of the right-of-way of U.S. Highway 93;
Sec. 29, S½ and sec. 32, those portions lying west of the westerly line of the right-of-way of the Caliente power line.
T. 18 S., R. 63 E.,
Secs. 5, 8, 17, 18, 19, 29, 30 and 31, those portions lying west of the westerly line of the right-of-way of the Caliente power line;
Secs. 6 and 7, all.

The lands described aggregate approximately 70,000 acres.

RALPH S. DUNN,
Acting Chief,
Division of Technical Services.

[FR Doc.74-7022 Filed 3-26-74;8:45 am]

[New Mexico 20093 (943a)]

NEW MEXICO

Transwestern Pipeline Company; Notice of Pipeline Application

MARCH 18, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Transwestern Pipeline Company has applied for a natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 27 E.,
Sec. 2, SW¼SW¼;
Sec. 10, E½NE¼, SW¼NE¼, NE¼SW¼, NW¼SE¼;
Sec. 11, NW¼NW¼.

The pipeline will convey natural gas crossing Federal lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analysis necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-7027 Filed 3-26-74;8:45 am]

[New Mexico 20178 (943a)]

NEW MEXICO

Transwestern Pipeline Company; Notice of Pipeline Application

MARCH 18, 1974.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Transwestern Pipeline Company has applied for a natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 28 E.,
Sec. 26, S½SW¼;
Sec. 27, S½SE¼.

The pipeline will convey natural gas crossing Federal lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analysis necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-7023 Filed 3-26-74; 8:45 am]

[New Mexico 20480 (943a)]

NEW MEXICO

Notice of Application

MARCH 18, 1974.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Transwestern Pipeline Company has applied for a natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 23 S., R. 24 E.,
Sec. 23, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 26, E½NW¼, SW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 34, E½NE¼, N½SE¼, SW¼SE¼;
Sec. 35, NW¼NW¼.
T. 24 S., R. 24 E.,
Sec. 3, NW¼NE¼, E½NW¼, N½SW¼;
Sec. 4, E½SE¼, SW¼SE¼;
Sec. 9, W½NE¼, SE¼NW¼, E½SW¼.

The pipeline will convey natural gas crossing Federal lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analysis necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-7024 Filed 3-26-74;8:45 am]

PRINEVILLE DISTRICT ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the Prineville District Advisory Board will meet on May 3, 1974, commencing at 1 p.m., in the Prineville District Office, Bureau of Land Management, 185 E. Fourth Street, Prineville, Oregon. The agenda for the meeting will focus on the role, function and composition of the Advisory Board.

The meeting will be open to the public. It is to be held in a room accommodating 30 people. In addition to discussion of agenda topics by board members, there will be time for brief statements by nonmembers. Persons wishing to make oral statements should so advise the chairman or co-chairman prior to the meeting, to aid in scheduling the time available. Any interested person may file a written statement for consideration by the board by sending it to the chairman, in care of the co-chairman: Prineville District Manager, P.O. Box 550, Prineville, Oregon 97754.

PAUL W. ARRASMITH,
Prineville District Manager.

MARCH 19, 1974.

[FR Doc.74-7026 Filed 3-26-74; 8:45 am]

[Wyoming 44574]

WYOMING

Notice of Application

MARCH 19, 1974.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Corporation has applied for a natural gas pipeline right-of-way in the following townships:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 89 W.,
T. 21 N., R. 90 W.,
T. 20 N., R. 91 W.,
T. 20 N., R. 92 W.

The pipeline will convey gas from a point in sec. 32, T. 21 N., R. 89 W., to a point in sec. 8, T. 20 N., R. 92 W.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Chief, Branch of

Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

PHILIP C. HAMILTON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.74-7025 Filed 3-26-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Notice No. 76]

CANNING AND FREEZING PEAS—IDAHO AND UTAH

Extension of the Closing Date for Filing of Applications for the 1974 Crop Year

Pursuant to the authority contained in § 401.103 of Title 7 of the Code of Federal Regulations, the time for filing applications for canning and freezing pea crop insurance for the 1974 crop year in the Idaho and Utah counties listed below is hereby extended until the close of business on April 5, 1974. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

IDAHO

Franklin

UTAH

Box Elder	Salt Lake
Cache	Weber

[SEAL] M. R. PETERSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.74-7106 Filed 3-26-74;8:45 am]

Farmers Home Administration

[A030]

SOUTH CAROLINA

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in the following counties in South Carolina:

Dorchester
Sumter

The Secretary has found that this need exists as a result of a natural disaster consisting of excessive rainfall in June 1973 in Dorchester County and excessive rainfall June 8–15, 1973, in Sumter County.

Therefore, the Secretary has designated these areas as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Public Law 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor John C. West that such designation be made.

Applications for Emergency loans must be received by this Department prior to May 13, 1974, for physical losses and prior to December 16, 1974, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 20th day of March 1974.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.74-7029 Filed 3-26-74;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

Notice of Meeting

The Electronic Instrumentation Technical Advisory Committee of the U.S. Department of Commerce will meet April 9, 1974 at 9:30 a.m. in Room 3817 of the Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

Members advise the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

Agenda items are as follows:

1. Opening remarks by the Director, Office of Export Administration, Rauer H. Meyer.
2. Election of Chairman.
3. Presentation of papers or comments by the public.
4. Review of current controls on electronic instrumentation, including report on any decontrol action effected since August 29, 1972.
5. Technical problems relating to export control coverage of electronic instrumentation and related technology.
6. Licensing procedures relating to electronic instrumentation and technology.
7. Foreign availability of electronic instrumentation currently under licensing control, including extent of U.S. participation and use of U.S. technology.
8. Executive session.
   a. Background of U.S. and COCOM control program and strategic criteria.
   b. Technical problems:
   (1) Military and military support uses of electronic instrumentation.
   (2) Significant parameters from the strategic standpoint, including adequacy of present control definition or coverage.
   c. Foreign availability, including state of the art in the USSR, Eastern Europe, and People's Republic of China.
   d. Licensing control over technology related to electronic instrumentation.

This will be the first meeting of the Electronic Instrumentation Technical Advisory Committee. It was established October 23, 1973, and consists of technical experts from a representative cross section of the electronic industry in the United States and officials representing various agencies of the U.S. Government. The industry members are appointed by the Assistant Secretary for Domestic and International Business to serve a 2-year term.

The public will be permitted to attend the discussion of agenda items 1–7, and a limited number of seats—approximately 15—will be available to the public for these agenda items. To the extent time permits, members of the public may present oral statements to the committee. Interested persons are also invited to file written statements with the committee.

With respect to agenda item (8), "Executive session," the Assistant Secretary of Commerce for Administration, on March 12, 1974, determined, pursuant to section 10(d) of Public Law 92-463, that this agenda item should be exempt from the provision of sections 10(a)(1) and (a)(3), relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552(b)(1).

Further information may be obtained from Charles C. Swanson, Director, Operations Division, Office of Export Administration, Room 1620, U.S. Department of Commerce, Washington, D.C. 20230 (A/C 202-967-4196).

Minutes of those portions of the meeting which are open to the public will be available 30 days from the date of the meeting upon written request addressed to: Central Reference and Records Facility, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: March 22, 1974.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.74-7068 Filed 3-26-74;8:45 am]

Maritime Administration

[Report No. 124]

LIST OF FREE WORLD AND POLISH FLAG VESSELS ARRIVING IN CUBA SINCE JANUARY 1, 1963

SECTION 1. The Maritime Administration is making available to the appropriate Departments the following list of vessels which have arrived in Cuba since January 1, 1963, based on information received through February 28, 1974, exclusive of those vessels that called at Cuba on U.S. Government-approved noncommercial voyages and those listed in section 2. Pursuant to established U.S. Government policy, the listed vessels are ineligible to carry U.S. Government-financed cargoes from the United States.

FLAG OF REGISTRY AND NAME OF SHIP	*Gross tonnage*
Total, all flags (171 ships)	1,311,860
Cypriot (80 ships)	676,632
Aegis Banner	9,024
Aegis Care	7,803
Aegis Courage	8,961
Aegis Eternity	8,814
Aegis Fame	9,241
Aegis Hope (previous trips to Cuba as the Huntsmore—British)	5,678

	Gross tonnage
Aegis Legend (previous trips to Cuba—Greece)	8,925
Aegis Loyal	10,405
Aegis Strength	9,439
Aftadelfos	8,136
*Aghia Tholassini	8,120
Aghios Ermolaos	7,208
Aghios Georgios	8,377
Akrotiri (previous trips to Cuba as the Anemone)	7,168
Alamar	12,299
Alda	7,292
Alexandros Skoutaris	8,280
Alma	9,097
Alpa	9,159
Amarilis	8,959
Annunciation Day	8,047
Antigoni	3,174
Areti	8,560
Arion	5,245
Aris (previous trips to Cuba as the Aris II)	9,561
Armar	9,559
Artigas	5,841
Anthenian Democracy (tanker)	8,675
Baracoa	9,242
Begonia	6,576
Byron (tanker)	8,720
Camelia	8,111
Castalia	7,641
Cleopatra	8,150
Degedo	9,000
Dorine Papalios (previous trips to Cuba as the Formentor—British)	8,424
E. D. Papalios	9,431
Elpida	8,382
Eftyhia (trips to Cuba—Greek)	10,347
Enarxis	9,212
George N. Papalios	9,071
Georgios C. (previous trips to Cuba as the Huntsfield—British and Cypriot	9,483
Georgios T	9,646
Goodluck	7,307
Granikos (previous trips to Cuba as the Silver Oak)	5,313
Herodemos	7,356
Hymettus (tanker)	12,038
**Irene's Pride (ex-Kika, Panama—previous trips to Cuba as the Santa Lucia—Italian)	9,278
Iris	8,479
June	9,357
Kentavros	10,173
Kiki (previous trips to Cuba as the Gardenia)	9,723
Kitsa	9,519
Magnolia	7,249
Margaret H	8,378
Mariner	7,916
Master George	7,334
May	8,853
Mimis N. Papalios	9,069
Mimosa	8,782
Miss Papalios	9,241
Mitera Assimina	7,731
Nea Hellas	9,241
Nike	9,505
Pantazis Calas	9,618
Petunia	7,843
Protoapostolos	8,130
Protoklitos	6,154
Protomachos	9,218
Ravens	8,036
Reifens	8,071
Rothens	8,106
Salvia	8,522
Silver Coast	7,473
Skipper	8,786
Successor	11,471
Theoskepasti	6,618
Torenia	8,077
Venturer	9,070
Zinnia	7,114
Somali (31 ships)	254,525

	Gross tonnage
*Agate Islands	8,738
Amber Islands	8,947
*Atlantic Ocean	9,077
**Atlas (trip to Cuba—Finnish)	3,916
Ber Sea	8,269
Coral Islands (previous trips to Cuba—British)	8,673
Eastglory (previous trips to Cuba—British)	8,995
Feihang	8,924
Feita	8,903
*Flores Sea	9,107
**Fortune Enterprise (trips to Cuba—British)	7,696
**Gloden Bridge (previous trips to Cuba—British)	7,898
Hemisphere (previous trips to Cuba—British)	8,718
Jade Islands	10,270
**Jollity (trips to Cuba—British)	8,819
**Kinross (previous trips to Cuba—British)	5,388
Marbella	8,409
Marble Islands	8,797
Mindanao Sea	8,871
Minfung	5,980
Mingwei	8,390
Molucca Sea	8,871
Nebula (previous trips to Cuba—British)	8,773
**New East Sea (previous trips to Cuba—British)	9,679
Onyx Islands	8,618
*Opal Islands	9,003
**Oriental (trips to Cuba as the Oceantramp—British)	5,986
*Sea Pioneer	9,514
**Seasage (previous trips to Cuba—British)	3,794
Topaz Islands	8,998
**Venice (trips to Cuba—British)	8,504
Polish (14 ships)	99,730
Baltyk	6,984
Bytom	5,967
Chopin	9,231
Chorzow	7,237
Energetyk	10,654
Grodziec	3,379
Huta Ostrowiec	7,179
Huta Zgoda	6,840
Hutnik	10,847
Kopalnia Siemianowice	7,165
Kopalnia Wujek	7,033
Piast	3,184
Rejowiec	3,401
Transportowiec	10,629
British (12 ships)	100,631
Arctic Ocean	8,701
Cheung Chau	8,566
Ho Fung	7,121
Ivory Islands	9,718
Mystic	6,656
Rowanmore	8,274
Sea Amber	10,421
Sea Coral	10,421
Sea Moon	9,085
Shun Wah (trips to Cuba as the Vercharmian—British)	7,265
Steed	8,989
Yunglutation	5,414
Yugoslav (8 ships)	56,016
Agrum	2,449
Bar	8,699
Cetinje	8,120
Niksic	9,916
Piva	7,519
Piod	3,657
Ulcinj	8,215
Tara	7,441
French (5 ships)	10,966

	Gross tonnage
Capitoine Nemo (ex-Atlanta—previous trips to Cuba as the Enee	1,232
Circe	2,874
Danae	3,486
**Urdazuri II (trips to Cuba as the Meike—Netherlands)	500
Nelee	2,874
Greek (4 ships)	32,171
Andromachi (previous trips to Cuba as the Penelope—Greek)	6,712
Ariadne	6,487
**Triaena (trips to Cuba as the Lambros M. Fatsis and the Lahortensia—British)	9,486
**Pothiti (trips to Cuba as the Huntsville—British)	9,486
Netherlands (6 ships)	6,794
*Antarctic	1,384
*Leo Polaris	1,528
Markab II	790
Megrez (previous trips to Cuba as the Gerda)	1,190
Rochab	787
Tempo	1,115
Italian (3 ships)	35,987
Alderamine (tanker)	12,505
Elia (tanker)	11,021
San Nicola (tanker)	12,461
Moroccan (2 ships)	4,739
El Mansour Bi Llah	1,525
Marrakech	3,214
Singapore (2 ships)	15,611
**Hwa Chu (trips to Cuba—British)	9,091
Tong Hoe	6,520
Guatemalan (1 ship)	2,239
**Peten (previous trips to Cuba as the Magister—British)	2,239
Guinean (1 ship)	852
**Drame Oumar (trip to Cuba as the Neve—French)	853
Lebanese (1 ship)	6,259
Antonis	6,259
Pakistani (1 ship)	8,708
**Maulabaksh (trips to Cuba as the Phoenician Dawn and East Breeze—British)	8,708

*Added to Report No. 123 appearing in the FEDERAL REGISTER issue of September 26, 1973.

**Ships appearing on the list which have made no trips to Cuba under their present registry.

SEC. 2. In accordance with approved procedures, the following vessels listed in this section which called at Cuba after January 1, 1963, have reacquired eligibility to carry U.S. Government-financed cargoes from the United States by virtue of the persons who control the vessels having given satisfactory certification and assurance;

(a) That such vessels will not, thenceforth, be employed in the Cuban trade so long as it remains the policy of the U.S. Government to discourage such trade; and

(b) That no other vessels under their control will thenceforth be employed in the Cuban trade, except as provided in paragraph (c); and

(c) That vessels under their control which are covered by contractual obligations, including charters, entered into

prior to December 16, 1963, requiring their employment in the Cuban trade shall be withdrawn from such trade at the earliest opportunity consistent with such contractual obligations.

FLAG OF REGISTRY AND NAME OF SHIP

a. Since last report:
None.

b. Previous reports:

Flag of registry:	Number of ships
British	49
Cypriot	12
Danish	1
Finnish	4
French	4
Germany (West)	1
Greek	31
Israeli	1
Italian	15
Japanese	1
Kuwaiti	1
Lebanese	9
Liberia	1
Moroccan	2
Norwegian	5
Singapore	1
Somali	2
Spanish	6
Swedish	1
Yugoslav	2
Total	149

SEC. 3. The following number of vessels have been removed from this list since they have been broken up, sunk or wrecked.

a. Since last report:	Gross tonnage
Anna Maria (Greek)	2,111
Empress (British)	9,841
Happy Land (Cypriot)	9,080
Huta Labedy (Polish)	7,221
Ilena (Cypriot)	5,925
Kopalnia Czladz (Polish)	7,252
Nedi 2 (Cypriot)	7,679
New Heath (Cypriot)	7,643
Noelle (Cypriot)	7,251

b. Previous reports: Flag of registry:	Broken up, sunk, or wrecked
British	35
Cypriot	83
Finnish	6
French	1
Greek	19
Italian	5
Japanese	1
Lebanese	37
Maltese	3
Polish	5
Monaco	1
Moroccan	1
Norwegian	1
Pakistani	1
Panamanian	9
Singapore	1
Somali	1
South Africa	2
Swedish	1
Yugoslav	7
Total	220

SEC. 4. The Ships listed in sections 1 and 2 have made the following number of trips to Cuba since January 1, 1963, based on information received through February 28, 1974.

Flag of registry	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	Total
British	133	180	126	101	78	62	45	53	18	10	6	812
Cypriot		1	17	27	42	68	115	199	173	86	96	824
Lebanese	64	91	58	25	16	16	4	1				275
Greek	99	27	23	27	29	7			1	1		214
Italian	16	20	24	11	11	10	15	13	9			129
Yugoslav	12	11	15	10	14	9	6	7	9	5	9	107
French	8	9	9	10	10	4	2	5	2	2	1	62
Finnish	1	4	5	11	12	8	2	1				44
Spanish	9	17										26
Norwegian	14	10										24
Moroccan	9	13	1							1		24
Maltese		2	6	1	4	8	1	2				24
Somali					2	11	7	4	6	6	23	59
Netherlands		4	2							8	17	31
Swedish	3	3										6
Kuwaiti		2	1									3
Israeli			2									2
Japanese	1					1						2
Danish	1											1
German (West)	1											1
Haitian			1									1
Monaco				1								1
Singapore									1			1
Subtotal	371	394	290	224	218	204	197	285	219	119	152	2,673
Polish	18	16	12	10	11	7	2	3	4			83
Grand total	389	410	302	234	229	211	199	288	223	119	152	2,756

NOTE.—Trip totals in section 4 exceed ship totals in sections 1 and 2 because some of the ships made more than one trip to Cuba. Monthly totals subject to revision as additional data becomes available.

By order of the Assistant Secretary of Commerce for Maritime Affairs.

Dated March 20, 1974.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.74-6954 Filed 3-26-74;8:45 am]

National Bureau of Standards

COMMERCIAL STANDARDS

Notice of Intent To Withdraw

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as revised; 35 FR 8349 dated May 28, 1970), notice is hereby given of the intent to withdraw the following Commercial Standards:

CS 120-58, "Ponderosa Pine Doors"
CS 163-64, "Ponderosa Pine Windows, Sash and Screens (Using Single Glass and Insulating Glass)"
CS 171-58, "Hardwood Veneered Doors (Solid-Core, Hollow-Core, and Panel and Sash)"
CS 190-64, "Wood Double-Hung Window Units"
CS 204-61, "Wood Awning Window Units"
CS 205-64, "Wood Casement Window Units"
CS 208-57, "Standard Stock Exterior Wood Window and Door Frames"
CS 262-63, "Water-Repellent Preservative Non-Pressure Treatment for Millwork"
CS 264-64, "Wood Horizontal-Sliding Window Units (All Sash Operating)"
CS 265-64, "Wood Horizontal-Sliding Window Units (One or More Non-Operating Sash)"
CS 266-64, "Wood Single-Hung Window Units"

It has been tentatively determined that each of these standards has become technically inadequate, and in view of the existence of up-to-date National Woodwork Manufacturers Association standards for the products covered, revision of the Commercial Standards would serve no useful purpose.

Any comments or objections concerning the intended withdrawal of these standards should be made in writing and directed to the Office of Engineering Standards Services, National Bureau of Standards, Washington, D.C. 20234, by April 26, 1974. The effective date of withdrawal, if appropriate, will be not less than 60 days after the final notice of withdrawal. Withdrawal action will terminate the authority to refer to these standards as voluntary standards developed under the Department of Commerce procedures from the effective date of the withdrawal.

Dated: March 21, 1974.

RICHARD W. ROBERTS,
Director.

[FR Doc.74-7018 Filed 3-26-74;8:45 am]

National Oceanic and Atmospheric Administration

CORONADO PRODUCTIONS, INC.

Notice of Permit Application

On December 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 33509) that an application had been filed with the National Marine Fisheries Service by Coronado Productions, Incorporated, Burbank, California 91505, for a scientific research permit to film documentary footage of migrating California gray whales (*Eschrichtius robustus*).

After reviewing the application, it was determined that the proposed filming was of sufficient merit to warrant granting a permit, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407). However, the Endangered Species Act of 1973 (P.L. 93-205), which became effective December 28, 1973, prohibits such activities without an endangered species permit. Applications for endangered species permits will be considered following the formulation of regulations under the Endangered Species Act. Notice is hereby given that

Coronado Productions, Incorporated, was not allowed to proceed with the proposed filming of gray whales.

Dated: March 20, 1974.

JACKIE GEHRINGER,
Acting Director,
National Marine Fisheries Service.

[FR Doc.74-7038 Filed 3-26-74;8:45 am]

HOWARD E. WINN

Issuance of Permit for Marine Mammals

On December 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 34004) that an application had been filed with the National Marine Fisheries Service by Dr. Howard E. Winn, Professor of Oceanography and Zoology, University of Rhode Island, Kingston, Rhode Island 02881, for a permit to conduct scientific research on certain marine mammals.

Notice is hereby given that, on March 15, 1974, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit to Howard E. Winn, authorizing him to: (1) Conduct whale census; (2) conduct an aerial and hydrophone census on Silver Navidad Banks; (3) photograph humpback whales and record the sounds of humpback whales on the Virgin Banks; (4) study the underwater behavior of the minke whale and record its sounds; (5) study the behavior, record the sounds, and play back sounds of pilot whales; (6) collect skin samples from dead humpback whales from the whale fisheries at Bequia West Indies; (7) record sounds, photograph, and study the behavior of any cetacean encountered. The Holder shall not conduct any research on marine mammals that could be considered as undue harassment. The activities authorized by this Permit are subject to certain conditions set forth therein. The Permit is available for review by interested parties in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, and the office of the Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: March 15, 1974.

ROBERT W. SCHONING,
Director, National Marine
Fisheries Service.

[FR Doc.74-7040 Filed 3-26-74;8:45 am]

LAFAYETTE PARK ZOO AND ST. PAUL COMO ZOO

Notice of Receipt of Application for Public Display Permits

Notice is hereby given that the following applicants have applied in due form for permits to take marine mammals for public display as authorized by section 101(a)(1) of the Marine Mammal Protection Act of 1972 and the Regulations Governing the Taking and Importing of Marine Mammals.

1. Lafayette Park Zoo, 3500 Granby Street, Norfolk, Virginia 23508, to take three California sea lions (*Zalophus californianus*) for public display:

a. The animals will be captured by professional sea lion capturers along the coast of California and transported to the Applicant's facility by air freight in appropriate containers.

b. The animals will be held in a facility with a pool 4½ feet deep, 41 feet wide, 55 feet long and with a 65,000 gallon capacity.

c. James L. Bousquet, the superintendent of the Zoo, has had considerable experience with marine mammals. He has worked with seals at Lodi, California; Fresno, California; San Francisco, California; and Providence, Rhode Island. The Zoo also has a full-time zoologist on the staff, and a veterinarian who is on call.

d. The estimated attendance will be 330,000 to 350,000 persons annually. Lafayette Park Zoo plans to initiate an educational program in the near future.

e. The Applicant's facilities and arrangement for transporting and maintaining the animals have been personally inspected and reviewed by a licensed veterinarian, who has certified that such arrangements are adequate for the well-being of the animals.

2. Saint Paul Como Zoo, Saint Paul, Minnesota 55103, to take six California sea lions (*Zalophus californianus*) for public display:

a. The animals will be captured by professional sea lion capturers along the coast of California and transported to the Applicant's facility by air freight in appropriate containers;

b. In winter quarters the California sea lions will be held on the main floor zoological building in a pen 10 feet by 23 feet, containing a pool 9 feet by 6 feet, depth 4½ feet. Additional winter quarters are located in basement of the zoological building, cage size 10 feet by 15 feet, pool size 10 feet by 15 feet, depth 3 feet. Summer display is a circular moated area, external diameter 100 feet, internal diameter 85 feet, water depth 3 feet.

c. John Fletcher, Director of Saint Paul Como Zoo, has been at the Zoo since 1957. He is a graduate of the University of Washington in Biological Sciences and had 10 years prior experience as keeper and supervisor at the Woodland Park Zoo in Seattle, Washington.

d. Saint Paul Como Zoo has about a million visitors annually. Como Zoo Docents, a trained volunteer service group, conducts educational programs for Como Zoo throughout the year. All exhibits and displays are used in this educational effort.

e. The Applicant's facilities and arrangements for transporting and maintaining the animals have been personally inspected and reviewed by a licensed veterinarian who has certified that such arrangements are adequate for the well-being of the animals.

Documents submitted in connection with these applications are available as follows:

Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, telephone 202-343-4543;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester Massachusetts 01930, telephone 617-281-0640;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, telephone 213-548-2575.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Director, National Marine Fisheries Service, is sending copies of the applications to the Marine Mammal Commission and the Committee of Scientific Advisors.

Interested parties may submit written data or views on these applications on or before April 26, 1974, to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

All statements and opinions contained in this notice in support of these applications are those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: March 21, 1974.

JACKIE GEHRINGER,
Acting Director, National
Marine Fisheries Service.

[FR Doc.74-7037 Filed 3-26-74;8:45 am]

THOMAS R. LOUGHLIN

Notice of Receipt of Application for Scientific Research Permit

Notice is hereby given that the following applicant has applied in due form for a permit to take, tag and release marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 and the Regulations Governing the Taking and Importing of Marine Mammals.

Thomas R. Loughlin, Department of Biology, Humboldt State University, Arcata, California 95521, to take, tag and release 60 harbor seals (*Phoca vitulina richardii*) in south Humboldt Bay, California.

The seals will be taken during the months of April, May and June, 1974. Several seals will be driven into a large seine net which has been extended across a narrow blind channel. As many as 15 seals may be taken at one time. The seals are driven into the net by a slow moving motor boat. The netted seals will then be hauled onto a mud-bank where each seal will be individually handled using a small hand net, marked and released. Each seal will be marked by using one or more colored plastic ear tags in the web of the hind flipper. A few selected animals (5-10) will be fitted with harnesses that strap around the back and contain telemetry devices. The straps are designed to disintegrate after a maximum time of four months in sea water.

The Applicant is a graduate student at Humboldt State University, working under the direct supervision of Dr. Warren J. Houck, Professor of Zoology at Humboldt. Five harbor seals were successfully taken using this technique as authorized by an economic hardship exemption issued under the provisions of the Marine Mammal Protection Act of 1972.

The capture, marking and subsequent observation of harbor seals in Humboldt Bay will furnish valuable information on the behavior, movements and ecology of this population of seals. The results of the proposed study will aid in understanding the influence of biological and environmental factors on age structure, longevity, social structure, reproductive ages, fecundity, and selection of haulingout areas and pupping grounds.

Documents submitted in connection with this application are available as follows:

Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, telephone 202–343–4543;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, telephone 213–548–2575.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Director, National Marine Fisheries Service, is sending copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Interested parties may submit written data or views on this application on or before April 26, 1974, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

All statement and opinions contained in this notice in support of this application are those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: March 15, 1974.

JOSEPH W. SLAVIN,
Acting Director, National Marine Fisheries Service.

[FR Doc.74–7039 Filed 3–26–74;8:45 am]

National Technical Information Services

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT–APPL number and the title.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. ATOMIC ENERGY COMMISSION, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,751,295: Plasma ARC Sprayed Modified Alumina High Emittance Coatings for Noble Metals; filed 5 November 1970, patented 7 August 1973; not available NTIS.

Patent 3,752,872: Method of Preparing Uniform Size Powders; filed 26 August 1971, patented 14 August 1973; not available NTIS.

Patent 3,753,666: Noble Metals Having a High Emittance Coating of Iron Titanate; filed 4 December 1967, patented 21 August 1973; not available NTIS.

Patent 3,753,763: Coatings for Columbium and Columbium Base Alloys; filed 24 January 1964, patented 21 August 1973; not available NTIS.

Patent 3,753,883: Process for Providing a Hydride-Free and Oxide-Free Surface on Zirconium and Zirconium-Alloy Bodies; filed 26 June 1972, patented 21 August 1973; not available NTIS.

Patent 3,754,506: Spark Gap Detonator; filed 7 May 1971, patented 28 August 1973; not available NTIS.

Patent 3,755,675: Nondestructive Analysis of Fuel Pins; filed 3 November 1972, patented 28 August 197?; not available NTIS.

Patent 3,757,249: Q-Switched-Mode-Locked Laser Oscillator; filed 15 February 1972, patented 4 September 1973; not available NTIS.

Patent 3,758,670: Production of Predominantly Crystalline Sols; filed 1 August 1969, patented 11 September 1973; not available NTIS.

Patent 3,759,709: Method for Producting Porous Metal Products; filed 28 April 1970, patented 18 September 1973; not available NTIS.

Patent 3,761,546: Method of Making Uranium Dioxide Bodies; filed 22 May 1972, patented 25 September 1973; not available NTIS.

DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,690,953: Vertical Junction Hardened Solar Cell; filed 10 September 1970, patented 12 September 1972; not available NTIS.

Patent 3,691,848: Fluid Rotary Speed Sensor; filed 10 July 1970, patented 19 September 1972; not available NTIS.

Patent 3,692,082: Jointed Door Assembly; filed 28 July 1971, patented 19 September 1972; not available NTIS.

Patent 3,693,265: Pilot Armreach and Cockpit Control Locator Machine; filed 7 July 1971, patented 26 September 1972; not available NTIS.

Patent 3,693,419: Compression Test; filed 30 December 1970, patented 26 September 1972; not available NTIS.

Patent 3,693,423: Natural Circulation Liquid Pumping System in Plume Pumping System for Test Engines; filed 6 October 1971, patented 26 September 1972; not available NTIS.

Patent 3,694,883: Method of Mounting a Nozzle Insert; filed 20 May 1970, patented 3 October 1972; not available NTIS.

Patent 3,731,106: Beam Scanner for High Power Laser; filed 16 November 1971, patented 1 May 1973; not available NTIS.

Patent 3,731,221: Tunable Optical Cavity for Chemical Laser; filed 10 August 1971, patented 1 May 1973; not available NTIS.

Patent 3,731,992: Spiral Grooved Liquid Cooled Laser Mirror; filed 6 April 1972, patented 8 May 1973; not available NTIS.

Patent 3,732,505: End Pump Device for a Laser; filed 7 June 1972, patented 8 May 1973; not available NTIS.

Patent 3,734,444: Safety Locking Device for Airborne Shockmounts; filed 8 June 1971, patented 22 May 1973; not available NTIS.

Patent 3,734,619: Method Utilizing Brewster Angle for Determining Angular Velocity and Light Beam Incidence Angles; filed 10 August 1971, patented 22 May 1973; not available NTIS.

Patent 3,735,146: Nanosecond Pulse Modulator; filed 27 June 1972, patented 22 May 1973; not available NTIS.

Patent 3,735,305: High Power Electrically Variable Inductor; filed 20 September 1972, patented 22 May 1973; not available NTIS.

Patent 3,735,399: Method for Improving the Target Position Vector Accuracy of an AMTI Radar; filed 23 November 1971, patented 22 May 1973; not available NTIS.

Patent 3,735,404: Crossover Circuit for Monopulse Radar; filed 7 June 1965, patented 22 May 1973; not available NTIS.

U.S. DEPARTMENT OF AGRICULTURE, Chief, Research Agreements and Patent Mgmt. Branch, Federal Building, General Services Division, Agricultural Research Service, Hyattsville, Maryland 20782.

Patent Application 288,761: Process for Removing Thermoplastic Film from a Mixture of Thermoplastic Film and Wastepaper; 13 September 1972; PC $4.00/MF $1.45.

Patent Application 194,161: Rigid Laminate of Creped Secondary Fiber Sheets; filed 1 November 1971; PC $3.00/MF $1.45.

Patent Application 336,187: Process for Removing Bark from Wood Chips; 1 June 1973; PC $4.00/MF $1.45.

Patent application 348,583: Combination Siding-Sheating Product; 6 April 1973, PC $4.00/MF $1.45.

Patent application 389,795: Impact Distribution Device; 20 August 1973, PC $4.00/MF $1.45.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Maryland 20014.

Patent application 400,760: Production of Interferon; 26 September 1973; PC $4.75/MF $1.45.

Patent 3,772,150: Process for Producing Vitamin D3 Metabolite; filed 29 December 1971, patented 13 November 1973; not available NTIS.

Patent 3,773,755: Conversion of Cytidylic Acid into Aracytidine-3'-Phosphate; filed 9 December 1970, patented 20 November 1973; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, DC 20240.

Patent application 412,845: Process for the Preparation of Yttrium-Silicon Compounds or Master Alloys by Silicon Carbide Reduction of Yttria; filed 5 November 1973; PC $4.00/MF $1.45.

Patent application 413,408: Hydrometallurgical Process for Copper Recovery from Sulfide Ores and Other Source Materials; filed 6 November 1973; PC $4.00/MF $1.45.

Patent application 415,908: Preparation of Microporous Rare-Earth Oxyhalides; filed 14 November 1973; PC $4.00/MF $1.45.

Patent 3,350,166: Synthesis of Aluminum Borate Whiskers; filed 19 January 1965, patented 31 October 1967; not available NTIS.

Patent 3,357,819: Preparation of Homogeneous Powders Composed of Ultrafine Particles; filed 16 March 1966, patented 12 December 1967; not available NTIS.

Patent 3,362,894: Anodic Method for Cleaning Nickel and Other Metal Surfaces for Electroplating; filed 3 December 1964, patented 9 January 1968; not available NTIS.

Patent 3,369,978: Electrodeposition of Molybdenum; filed 1 October 1964, patented 20 February 1968; not available NTIS.

Patent 3,370,319: Crab Processing Apparatus; filed 21 October 1965, patented 27 February 1968; not available NTIS.

Patent 3,371,322: Shingle Filing and Retrieval System; filed 29 December 1965, patented 27 February 1968; not available NTIS.

Patent 3,372,428: Shellfish Meat Picking Machine for a Crab Processing Apparatus; filed 29 March 1966, patented 12 March 1968; not available NTIS.

Patent 3,421,877: Method of Precipitating Potash from a Phosphate Mixture; filed 19 April 1965, patented 14 January 1969; not available NTIS.

Patent 3,424,556: Production of Carbon Black from Coal; filed 27 July 1966, patented 28 January 1969; not available NTIS.

Patent 3,425,791: Underwater Gravity-Type Monomolecular Film Dispensor and Method of Use; filed 9 June 1965, patented 4 February 1969; not available NTIS.

Patent 3,425,793: Process for Fractionating Lanthanide Mixtures Containing Cerium; filed 8 June 1966, patented 4 February 1969; not available NTIS.

Patent 3,427,683: Apparatus for Forming Spherical Pellets; filed 18 January 1967, patented 18 February 1969; not available NTIS.

Patent 3,428,114: Method and Apparatus for Preventing Scale Formation in Heat Exchangers; filed 27 March 1967, patented 18 February 1969; not available NTIS.

Patent 3,429,657: Method for Recovering and Producing Potassium Salts; filed 2 September 1966, patented 25 February 1969; not available NTIS.

Patent 3,429,679: Process for Improving the Heating Values of Fuel Gases; filed 7 June 1965, patented 25 February 1969; not available NTIS.

Patent 3,431,766: Device for Drawing Wire Which Eliminates Chatter; filed 15 June 1966, patented 11 March 1969; not available NTIS.

Patent 3,433,680: Platinum Type Electrode for a Solid Electrolyte Fuel Cell; filed 31 January 1967, patented 18 March 1969; not available NTIS.

Patent 3,434,401: Sealing Strips for Concrete Slabs; filed 20 June 1967; patented 25 March 1969; not available NTIS.

Patent 3,434,800: Process for Determining Mercury in Geologic Materials; filed 16 May 1966, patented 25 March 1969; not available NTIS.

Patent 3,434,850: Process for Preserving Fish by Irradiation; filed 29 July 1966, patented 25 March 1969; not available NTIS.

Patent 3,435,668: Method of Determining Preferred Orientation in Metals; filed 26 August 1966, patented 1 April 1969; not available NTIS.

Patent 3,439,074: Method for Preparing Desalination Membranes; filed 1 October 1965, patented 15 April 1969; not available NTIS.

Patent 3,441,404: Extraction of Copper from Molten Metal Melts; filed 25 November 1966, patented 29 April 1969; not available NTIS.

Patent 3,443,891: Method and Apparatus for Growing Large Monocrystals of Nonmetallics; filed 6 June 1966, patented 13 May 1969; not available NTIS.

Patent 3,446,720: Preparation of High-Purity Nickel and Cobalt; filed 27 January 1965, patented 27 May 1969; not available NTIS.

Patent 3,455,789: Process for Continuous Carbonization of Coal; filed 21 October 1965, patented 15 July 1969; not available NTIS.

Patent 3,516,503: Electrically Controlled and Powered Submarine Rotary Corer System; filed 23 December 1968, patented 23 June 1970; not available NTIS.

Patent 3,540,983: Method for Producing Protein by Growth of Microorganisms on a Water Extract of Coal; filed 11 April 1968, patented 17 November 1970; not available NTIS.

Patent 3,540,995: H-Coal Process: Slurry Oil System; filed 14 November 1968, patented 17 November 1970; not available NTIS.

Patent 3,562,916: Retrievable Borehole Extensometer; filed 14 May 1969, patented 16 February 1971; not available NTIS.

Patent 3,572,506: Underwater Storage Tank; filed 14 February 1969, patented 30 March 1971; not available NTIS.

Patent 3,575,697: Acid Leaching of Manganese from Siliceous Ores and Slags; filed 7 January 1969, patented 20 April 1971; not available NTIS.

Patent 3,576,262: Rotary Particle Distributor for Minimizing Particle Size Segregation in a Bin; filed 6 June 1969, patented 27 April 1971; not available NTIS.

Patent 3,607,236: Reclaiming of Superalloy Scrap; filed 22 September 1969, patented 21 September 1971; not available NTIS.

Patent 3,607,329: Cellulose Acetate Butyrate Semipermeable Membranes and Their Production; filed 22 April 1969, patented 21 September 1971; not available NTIS.

Patent 3,612,797: High-Voltage Fluidic Circuit Interrupter; filed 22 September 1969, patented 12 October 1971; not available NTIS.

Patent 3,613,779: Apparatus for Obtaining High Transfer Rates in Falling Water Film Evaporators and Condensers; filed 6 October 1969, patented 19 October 1971; not available NTIS.

Patent 3,615,190: Oxidation of Lead Blast Furnace Matte; filed 29 January 1969, patented 26 October 1971; not available NTIS.

Patent 3,617,540: Removal of Nitrogen and Phosphorus from Waste Waters; filed 13 May 1970, patented 2 November 1971; not available NTIS.

Patent 3,620,206: Fluid Heating by Radiation; filed 24 March 1970, patented 16 November 1971; not available NTIS.

Patent 3,620,715: Steel Scrap Oxidation Acceleration by Surface Impregnation Techniques; filed 24 July 1969, patented 16 November 1971; not available NTIS.

Patent 3,622,304: Ferrothermic Extraction of Copper; filed 3 March 1970, patented 23 November 1971; not available NTIS.

Patent 3,624,684: Borehole Deformation Gage; filed 19 November 1969, patented 30 November 1971; not available NTIS.

Patent 3,625,861: Regeneration of Zinc Halide Catalyst Used in the Hydrocracking of Polynuclear Hydrocarbons; filed 15 December 1969, patented 7 December 1971; not available NTIS.

Patent 3,629,390: Avian Specific, Bio-Affecting Preparation and Treatment Method; filed 18 December 1969, patented 21 December 1971; not available NTIS.

Patent 3,630,058: Process and Apparatus for Forming Tubes with Spiral Corrugations; filed 27 January 1970, patented 28 December 1971; not available NTIS.

Patent 3,630,943: Preparation of Absorbents for Sulfur Oxide Removal; filed 14 August 1969, patented 28 December 1971; not available NTIS.

Patent 3,631,338: Method and Apparatus for Determining Galvanic Corrosion by Polarization Techniques; filed 30 June 1969, patented 28 December 1971; not available NTIS.

Patent 3,636,751: Radial Flow Cell; filed 1 September 1970, patented 25 January 1972; not available NTIS.

Patent 3,638,035: Primary and Secondary Shunt Paths for Dissipating an Electrical Charge; filed 23 March 1971, patented 25 January 1972; not available NTIS.

Patent 3,666,297: Tube Connector Fitting; filed 22 April 1971, patented 30 May 1972; not available NTIS.

Patent 3,785,731: Method and Apparatus for Producing Orthophotoplans; filed 2 June 1972, patented 15 January 1974; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA—Code GP-2, Washington, DC 20546.

Patent application 414,042: Fine Particulate Capture Device; filed 8 November 1973; PC $3.00/MF $1.45.

Patent application 418,010: Adjustable Frequency Response Microphone; filed 21 November 1973; PC $3.00/MF $1.45.

Patent application 419,831: Pseudo-Noise Test Set for Communication System Evaluation; filed 28 November 1973; PC $3.00/MF $1.45.

Patent 3,752,996: Method of and Device for Determining the Characteristics and Flux Distribution of Micrometeorites; patented 14 August 1973; not available NTIS.

Patent 3,772,174: Deposition of Alloy Films; patented 13 November 1973; not available NTIS.

Patent 3,772,272: Digital Second-Order Phase-Locked Loop; patented 4 December 1973; not available NTIS.

Patent 3,772,691: Automatic Vehicle Location System; patented 13 November 1973; not available NTIS.

Patent 3,776,432: Lyophilized Spore Dispenser; patented 4 December 1973; not available NTIS.

Patent 3,777,200: High Powered Arc Electrodes; patented 4 December 1973; not available NTIS.

Patent 3,777,546: System for Calibrating Pressure Transducer; patented 11 December 1973; not available NTIS.

Patent 3,777,605: Vee-Notching Device; patented 11 December 1973; not available NTIS.

Patent 3,778,791: Thermomagnetic Recording and Magneto-Optic Playback System Having Constant Intensity Laser Beam Control; patented 11 December 1973; not available NTIS.

[FR Doc.74-6891 Filed 3-26-74;8:45 am]

Domestic and International Business Administration

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Notice of Meeting

The meeting of the Computer Systems Technical Advisory Committee, scheduled for Thursday, March 28, 1974, has been cancelled and rescheduled for Wednesday, April 10, 1974, at 9:30 a.m. in Room 3817 of the Main Commerce

Building, 14th and Constitution Avenue, N.W., Washington, D.C. The agenda and other information relating to the committee, as published in the FEDERAL REGISTER, 39 FR 9683, on Wednesday, March 13, 1974, remains unchanged.

Dated: March 26, 1974.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.74-7251 Filed 3-26-74;11:38 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

Notice of Meeting

Pursuant to Public Law 92-463, the Director, Center for Disease Control, announces the meeting dates and other required information for the following National Advisory body of the National Institute for Occupational Safety and Health which is scheduled to assemble during the month of April 1974.

Committee name	Date, time, and place	Type of meeting and/or contact person
Safety and Occupational Health Study Section.	Apr. 18-19, 1974, 9 a.m., conference room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Apr. 18, 1974, 9 a.m.-12 noon, closed remainder of meeting. Contact: Dr. John F. Bester, Parklawn Bldg., 5600 Fishers Lane, room 3-44, Rockville, Md. Code: 301-443-4493.

Purpose. The committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the Institute staff on training and research needs.

Agenda. From 9 a.m. to 12 noon on April 18, the Study Section will be open for administrative and staff reports, presentation of certificates to retiring members, and the Committee report on training. From 1:20 p.m. on April 18 through the end of the meeting, the Study Section will be reviewing research and demonstration grant applications and will not be open to the public, in accordance with the determination by the Director, Center for Disease Control, pursuant to the provisions of Public Law 92-463, section 10(d).

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the meeting may be obtained from the contract person listed above.

Dated: March 19, 1974.

DAVID J. SENCER,
Director, Center for Disease Control.

[FR Doc.74-7021 Filed 3-26-74;8:45 am]

Food and Drug Administration

[DESI 7937; Docket No. FDC-D-683; NDA 7-937, etc.]

CERTAIN ANTIHISTAMINIC DRUGS USED IN ALLERGY

Drug Efficacy Study Implementation; Follow-up Notice; Reevaluation

Correction

In FR Doc. 74-2973, appearing at page 4679 in the issue for Wednesday, February 6, 1974, in paragraph "5." in the first column on page 4680, the designation "NDA-937" should be changed to read "NDA 7-937".

DIETHYLSTILBESTROL FOR USE IN CATTLE AND SHEEP

Notice to Holders of New Animal Drug Applications

On January 24, 1974, the United States Court of Appeals for the District of Columbia Circuit handed down its decisions holding that the action of the Food and Drug Administration in withdrawing approval of the new animal drug applications (NADA's) for diethylstilbestrol (DES) for use in feed and implants in cattle and sheep was unlawful. *Chemetron Corporation et al.* v. *United States Department of Health, Education, and Welfare*, No. 72-1864 (D.C. Cir. January 24, 1974); *Hess & Clark, Division of Rhodia, Inc.* v. *Food and Drug Administration*, No. 73-1581 (D.C. Cir. January 24, 1974). These decisions have the effect of reinstating the regulations and the previously approved NADA's for such uses.

Elsewhere in this issue of the FEDERAL REGISTER (pg. 11299), the Commissioner of Food and Drugs is proposing to revoke approval of the methods of analysis for DES in edible animal tissue currently specified in 21 CFR 121.241 and 135g.26, which were approved in 1963. Using these methods, the Commissioner of Food and Drugs had concluded that the exemption to the anticancer provisions in section 512(d)(1)(H) of the Federal Food, Drug, and Cosmetic Act was applicable. After a decision is made on that proposal, the Commissioner intends to issue a notice of opportunity for hearing proposing withdrawal of approval of the NADA's for DES for all animal drug use. A hearing will be held if one is requested.

The Commissioner has considered whether interim action is warranted to reduce the potential for residues from use of DES, pending resolution of this matter.

The Commissioner has concluded that there is presently available insufficient data and information upon which any change in the existing DES NADA's could be approved. The Commissioner has also concluded that the level of sensitivity of the present methods used for approval under section 512(d)(1)(H) of the act and for regulatory detection of illegal residues under section 512(b)(7) of the act is inadequate, in view of the demonstrated carcinogenic effect of the drug in animals and humans and the fact that a more sensitive method of analysis has detected residues of DES in edible tissue at levels below the known sensitivity of the currently approved methods. The Commissioner has further concluded that approval of any alternative controls for use of DES must be supported by proof that such controls would be reasonably expected to be followed in practice. On the basis of the existing information available to the Commissioner, there is no basis for determining that DES has been proved to be safe.

The Commissioner recognizes that new controls for the use of DES in cattle and sheep, as have been suggested by some manufacturers, may reduce the potential for residues from use of DES. The Commissioner urges the filing of supplemental NADA's for this purpose, and particularly to extend from 7 to 14 days the withdrawal period after the use of DES in feed. Supplemental NADA's proposing such changes may be submitted in the following two ways:

1. Any holder of an NADA for DES may submit a supplemental NADA proposing changes in the NADA pursuant to § 135.13a (21 CFR 135.13a). To be approved, such supplemental NADA's must contain the information required by section 512(b), (d)(1)(H), and (d)(2) of the act, including specifically (a) a suitable method(s) of analysis for detection of residues of DES as required by section 512(b)(7) and (d)(1)(H) of the act; (b) data demonstrating that, using such a suitable method, no residues of DES will occur in edible tissue after slaughter when the drug is used as directed in the labeling; and (c) information upon which the Commissioner can conclude that any proposed changes in conditions of use are reasonably certain to be followed in practice. In particular, the Commissioner believes that it is essential to approval of any supplemental NADA for DES that a suitable method(s) of analysis for detection of residues of DES be developed and validated with a greater sensitivity than is presently available, and that additional studies be conducted using such a method(s) to show the depletion curve of DES from muscle tissue, liver, kidneys, blood, urine, and feces, on a statistically significant number of test animals after use of DES in feed and in implants. If any such supplemental NADA's are submitted, the Commissioner will review the data, and the application will be approved unless any of the reasons for refusing or withdrawing approval as stated in section 512(d) and (e) of the act, or 21 CFR 135.12 and 135.28 apply, or if the application fails to meet the requirements of 21 CFR 135.7.

2. Any holder of an NADA for DES may also submit a supplemental NADA proposing changes in the NADA pursuant to § 135.13a (d) through (k) (21 CFR 135.13a (d) through (k)). Under these provisions, a supplemental NADA which provides additional precautionary or warning information in labeling may be immediately implemented, prior to review by the Food and Drug Administration. This permits, and the Commissioner urges, an NADA holder immediately to adopt whatever additional restrictions

designed to reduce the likelihood of residues he may conclude to be appropriate, even if he is unable at this time to submit the data required for a supplemental NADA as specified in paragraph 1 above. If, however, such a supplemental NADA is not accompanied by the supporting data specified in paragraph 1 above, the Commissioner will, pursuant to § 135.13a(f), defer review of the submission until all of the issues surrounding the currently approved NADAs are finally resolved. Appropriate action will then be taken on any such supplemental NADA's.

Although no supplemental NADA's for DES may be approved in the absence of supporting data, the statute provides that applications with respect to animal feeds containing a new animal drug (Form FD–1800) submitted pursuant to section 512(m) of the act may be approved so long as a regulation promulgated under section 512(i) permitting use of the drug is in existence. Accordingly, a Form FD–1800 and a supplement to a Form FD–1800 for DES will be approved regardless of pending questions with respect to the safety or effectiveness of the drug, if no grounds for refusing approval under section 512(m) are applicable. Approval of a Form FD–1800 or a supplement to a Form FD–1800 in no way constitutes approval of the safety of the drug itself.

Dated: March 25, 1974.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.74–7169 Filed 3–26–74;8:45 am]

[FAP 4H2929]

VINELAND CHEMICAL CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 4H2929) has been filed by Vineland Chemical Co., P.O. Box 745, Vineland, NJ 08360 proposing that § 121.2505 *Slimicides* (21 CFR 121.2505) be amended to provide for the safe use of 2,3-dibromopropionaldehyde as a slimicide in the manufacture of paper and paperboard intended to contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: March 20, 1974.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.74–7070 Filed 3–26–74;8:45 am]

Office of Education

DRUG ABUSE PREVENTION AND EARLY INTERVENTION PROJECTS

Notice of Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in section 3 of the Drug Abuse Education Act of 1970 (84 Stat. 1386, 21 U.S.C. 1002), applications are being accepted from local educational agencies for the training of school leadership teams to establish drug abuse prevention and early intervention projects in schools within the school district of the applicant local educational agency. Criteria for selection of applications and other relevant program standards have been published in the FEDERAL REGISTER in proposed form on March 15, 1974.

Applications must be received by the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, SW., Washington, D.C. 20202, Attention: 13.420), on or before May 1, 1974.

An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

A separate set of selection criteria and a notice of closing date are being published in final form for community based drug abuse education projects to be carried out by community based public and private nonprofit agencies, institutions, and organizations.

(21 U.S.C. 1002)

Dated: March 21, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

(Catalog of Federal Domestic Assistance Number 13.420, Drug Abuse Education Program)

[FR Doc.74–6962 Filed 3–26–74;8:45 am]

INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE

Notice of Closing Date for Receipt of Applications

The Commissioner of Education hereby gives notice that, pursuant to the Indian Elementary and Secondary School Assistance Act, Title III of P.L. 81–874, as added by Title IV, Part A of Public Law 92–318 (20 U.S.C. 241aa–241ff), applications for assistance are being accepted from schools (located on or near a reservation) which are nonlocal educational agencies and local educational agencies which have been local educational agencies for less than three years, for grants pursuant to section 303(b) of the Act (20 U.S.C. 241bb(b)). Section 303(b) enables the Commissioner to provide financial assistance to eligible local and nonlocal educational agencies for programs that meet the purpose of the Act. Such assistance is to be provided in any fiscal year from sums not to exceed five percent of the amount appropriated for that fiscal year for grants under section 303(a) of the Act.

Assistance under section 303(b) of the Act may be used for the purpose of developing and carrying out elementary and secondary school programs specially designed to meet the special educational needs of Indian students, and for meeting costs incurred in connection with the establishment of eligible local and nonlocal educational agencies. A Notice of Proposed Rulemaking adding a new Subpart D to 45 CFR Part 186, and containing eligibility factors and criteria for the selection of applications under section 303(b) of the Act, was published at 39 FR 9842, March 14, 1974. These regulations will become effective 30 days after publication in the FEDERAL REGISTER in final form.

Awards under section 303(b) of the Act will be subject to the requirements of the Act and to appropriate provisions of 45 CFR Part 186, as indicated in § 186.33(b) of the Proposed Rule. Assistance under this program also is subject to applicable provisions in 45 CFR Part 100a (38 FR 30662, November 6, 1973). Criteria for the selection of applications are contained in 45 CFR 100a.-26(b) (38 FR 30664, November 6, 1973) and in § 186.33 of the Proposed Rule.

Applications may be obtained from: Program Manager, Part A, U.S. Office of Education, Office of Indian Education, Room 426, Reporters Building, 7th and D Streets SW., Washington, D.C. 20202.

Completed applications for assistance pursuant to this notice should be submitted to: U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C. 20202 (mailing address: U.S. Office of Education, Application Control Center, 400 Marvland Avenue SW., Washington, D.C.)

In order to allow sufficient time for review by the Office of Education and the National Advisory Council on Indian Education as provided for under the Act, applications under section 303(b) must be received by the Application Control Center on or before April 29, 1974.

An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal Holiday

not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare or the U.S. Office of Education mailrooms in Washington, D.C. (In establishing the date of receipt the Commissioner will rely on the time-date stamp of such mailrooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

(20 U.S.C. 241aa–241ff)

Dated: March 21, 1974.

JOHN OTTINA,
U.S. Commissioner of Education.

[FR Doc.74–6963 Filed 3–26–74;8:45 am]

NATIONAL ADVISORY COUNCIL ON EDUCATION PROFESSIONS DEVELOPMENT

Notice of Meeting

Notice is hereby given, pursuant to Section 10(a)(2), Public Law 92–463, that the next meeting of the National Advisory Council on Education Professions Development will be held on Friday, April 19, 1974, 8:30 a.m. to 3:00 p.m. local time, in the Executive Suite of the Statler Hilton Hotel, Sixteenth Street, between K and L Streets, NW., Washington, D.C.

The National Advisory Council on Education Professions Development is established under Section 502 of the Education Professions Development Act (Public Law 90–35). The Council is charged with the review of the Education Professions Development Act and of all other Federal programs for the training and development of educational personnel.

The meeting will be held for the purpose of appointing an Executive Director. The proposed agenda includes review of applications and references, discussion of applicants' qualifications, and the interviewing of candidates nominated by a committee of the Council.

Because of the nature of the agenda, the meeting will be closed to the public. Approval for closing the meeting has been granted by the U.S. Commissioner of Education under the authority of section 10(d) of the Federal Advisory Committee Act (P.L. 92–463) and section 552 (b)(6) of Title 5 of the United States Code.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Council office, located at 1111 20th Street, NW., Room 308, Washington, D.C. 20036.

Signed at Washington, D.C., on March 21, 1974.

JOSEPH YOUNG,
Executive Director.

[FR Doc.74–7035 Filed 3–26–74;8:45 am]

Office of the Secretary

OFFICE FOR CIVIL RIGHTS

Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare has been amended to reflect certain changes in the Statement of the Office for Civil Rights (38 FR 29103) 10/15/73, as follows:

Section 1D.10, the Statement of Organization is amended to include an Office of Governmental Relations in the Office of the Director, and to change the title "Assistant Director (Policy, Planning, and Program Development)" to "Assistant Director (Planning and Program Coordination)."

Section 1D.20, the Statement of Functions is amended to include the functional statement for the new Office of Governmental Relations and the revised functional statement of the Assistant Director (Planning and Program Coordination).

The revised sections read as follows:

SEC. 1D.10 *Organization.* The Office for Civil Rights is under the supervision of the Director, Office for Civil Rights, who reports directly to the Secretary. He also serves as Special Assistant to the Secretary for Civil Rights. The Office for Civil Rights consists of:

Office of the Director:
- Director
- Deputy Directory
- Office of Policy Communication
- Office of Public Affairs
- Office of Governmental Relations
- Assistant Director (Planning and Program Coordination)
- Assistant Director (Administration and Management)

Contract Compliance Division
Elementary and Secondary Education Division
Higher Education Division
Health and Social Services Division

The statement for the Office of Governmental Relations in *Sec.1D.20 Functions* will be inserted after the statement for the Office of Public Affairs. The statement for the Office of Governmental Relations will be numbered (5). As a consequence, the numbers of the remaining functional statements which follow will change accordingly.

The added and amended statements read as follows:

(5) *Office of Governmental Relations.* The Office of Governmental Relations is responsible for facilitating coordination between the Office for Civil Rights and other Executive Branch Departments and agencies, as well as other Department of Health, Education, and Welfare agencies and offices. It reviews policies and regulations which are circulated to the Office for Civil Rights by other agencies; identifies and coordinates inter-Office comments on new Departmental policies and regulations of potential interest to Department of Health, Education, and Welfare civil rights programs; ensures that final policy comments and determinations proceed according to schedule.

(6) *Assistant Director Planning and Program Coordination.* The Assistant Director (Planning and Program Coordination) is responsible for advising, coordinating and assisting the operating Divisions and the Directors, Office for Civil Rights in the various HEW Regional Offices in determining priorities, the development of long range planning, and the determination of program requirements. He coordinates the development of the annual enforcement plan and he provides overall guidance to the training and technical assistance functions carried out by each of the Divisions. He is responsible for initiating appropriate planning activities and for ensuring that new programs are coordinated at the National and Regional levels.

Dated: March 18, 1974.

THOMAS S. MCFEE,
Acting Assistant Secretary for Administration and Management.

[FR Doc.74–7061 Filed 3–26–74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 74 20]

INTERNATIONAL VOYAGE LOAD LINES

Implementation of New Provisions

The purpose of this notice is to inform the public of the implementation of the International Voyage Load Line Act of 1973 (Pub. L. 93–115, 87 Stat. 418 (Oct. 1, 1973)).

The International Voyage Load Line Act of 1973 replaces the Foreign Load Lines Act (46 U.S.C. 85–85g), which has been repealed. The purpose of the new Act is to implement the provisions of the International Convention on Load Lines, 1966 (18 U.S.T. 1857; TIAS 6331), to which the United States is a party and which came into force on July 21, 1968.

To implement the Convention, and new Act substantially re-enacted the repealed Act, except for the following changes:

1. Application has been modified as follows:

a. In lieu of the 150-gross ton limit formerly used, the Convention and the Act apply to vessels of more than 79 feet in length, the keel of which is laid (or which is at a similar stage of construction) on or after July 21, 1968; and

b. The former exemption allowed for a ship that is being towed and not carrying cargo or passengers has been discontinued.

2. The sanction of imprisonment is increased:

a. From three months to one year for the intentional violation of a detention order; and

b. From one year to two years for the alteration, defacement, or obliteration of the prescribed load line.

Since Congress has affirmed and continued the original statute and, in effect, has validated the regulations issued thereunder, the regulations promulgated in 46 CFR Part 42, continue in effect under the authority of the International Voyage Load Line Act of 1973, until expressly abrogated, modified, or amended as published in the FEDERAL REGISTER.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.74-6991 Filed 3-26-74;8:45 am]

[CGD 74-79]

TOWING INDUSTRY ADVISORY COMMITTEE

Notice of Open Meeting

This is to give Notice pursuant to Public Law 92-463, Sec. 19(a), approved October 6, 1972, that the Towing Industry Advisory Committee will conduct open meetings on Wednesday, April 17, 1974, and Thursday, April 18, 1974, in Meeting Room No. 2 of The Rivergate, 4 Canal Street, New Orleans, Louisiana. The first day's session will begin at 9:00 a.m. and will last all day. The meeting on April 18, 1974, will begin at 9:00 a.m. and will adjourn at noon.

Discussion items on the agenda are the following:

1. Marine Sanitation Devices
2. Shipboard Radiotelephones
3. Safety and Qualifications Personnel
4. Personnel Education
5. Ports and Waterways Safety
6. Oil Pollution Prevention
7. Bridges
8. Rules of the Road
9. Coast Guard Work with the Occupational Safety and Health Act
10. Regulations on Tank Vessels and Hazardous Cargoes
11. Barge Repairs

The Towing Industry Advisory Committee was chartered by the Commandant of the Coast Guard on August 3, 1973 to advise the Marine Safety Council on matters regarding safe towing operations. Public members of the Committee serve voluntarily without compensation from the Federal Government, either travel or per diem.

Interested persons may seek additional information by writing:

Commandant (G-CMC/82)
U.S. Coast Guard
Washington, D.C. 20590

or by calling the Executive Director, Towing Industry Advisory Committee at 202-426-1477.

Dated: March 21, 1974.

W. F. REA III,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Merchant Marine Safety.

[FR Doc.74-6993 Filed 3-26-74;8:45 am]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON AGENCY ORGANIZATION AND PERSONNEL

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Agency Organization and Personnel of the Administrative Conference of the United States, to be held at 1:30 p.m. on April 3, 1974 in the Library, Suite 500, 2120 L Street, NW., Washington, D.C. 20037.

The Committee will meet to discuss two pending studies, the role of the chairman in independent regulatory agencies and the use of administrative law judges.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least a day in advance. To the extent that time permits the Committee Chairman may allow public presentation of oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting. For further information concerning this committee meeting contact Richard K. Berg, Suite 500, 2120 L Street, NW., Washington, D.C. 20037 or phone 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

MARCH 20, 1974.

[FR Doc.74-7078; Filed 3-26-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-450, 50-451]

DELMARVA POWER & LIGHT CO. AND PHILADELPHIA ELECTRIC CO.

Notice of Prehearing Conference

In the matter of Delmarva Power & Light Co., and Philadelphia Electric Co. (Summit Power Station, Units 1 & 2).

Take notice, that pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Construction Permits," dated August 24, 1973, and in accordance with Section 2.752 of the Commission's Rules of Practice, the Atomic Safety and Licensing Board will conduct a prehearing conference for the proceeding on April 25, 1974 at 9:30 a.m. local time, in the U.S. District Court, Courtroom No. 2, 844 King Street, Wilmington, Delaware 19801.

This conference is in connection with the application of the Delmarva Power & Light Co. and the Philadelphia Electric Co. for construction permits to build two high temperature gas-cooled nuclear reactors in New Castle County, Delaware, five miles northeast of Middletown, Delaware, to be known as the Summit Power Station, Units 1 and 2. Each of the units is designed for initial operation at 2,000 megawatts thermal with a net electrical output of approximately 785 megawatts.

The prehearing conference will deal with the following matters:

(1) Simplification, clarification, and specification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of a hearing schedule; and

(6) Such other matters as may aid in the orderly disposition of the proceeding.

The Board will be concerned with the radiological health and safety issues and environmental issues set forth in the Commission's August 24, 1973 Notice of Hearing, 38 FR 23547, Aug. 31, 1973. All interested members of the public are invited to attend this conference, as well as the public evidentiary hearing, to be scheduled later. No limited appearance statements will be heard at this conference; however, they will be heard on the first day of the later-scheduled evidentiary hearing.

It is so ordered.

Issued at Washington, D.C., this 22d day of March 1974.

For the Atomic Safety and Licensing Board.

THOMAS W. REILLY,
Chairman.

[FR Doc.74-7074 Filed 3-26-74;8:45 am]

LMFBR BASE PROGRAM

Determination in Regard to Pending Preparation of NEPA Impact Statement

On June 12, 1973, the U.S. Court of Appeals for the District of Columbia Circuit held in *Scientists' Institute for Public Information, Inc.* v. *AEC* that present preparation of an environmental impact statement on the Liquid Metal Fast Breeder Reactor (LMFBR) program is required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The Commission, on June 14, 1973, determined that preparation of an environmental impact statement on the LMFBR program would immediately be initiated pursuant to the Court's decision. A subsequent declaratory order of the U.S. District Court for the District of Columbia provided for completion of this statement by June 14, 1974.

The Commission has already prepared the issued section 102(2)(C) impact statements on a conceptual LMFBR demonstration plant and on the Fast Flux Test Facility. In addition to these statements and the overall statement called

for by the Court's decision, the Commission will issue further environmental impact statements in connection with licensing of construction and operation of the first LMFBR Demonstration Plant as well as any other future LMFBR power plants, as provided for in AEC Regulations (10 CFR Part 50, Appendix D).

The Commission has determined that an examination should be made as to whether proceeding with the LMFBR program during the period of preparation of the referenced NEPA impact statement would be consistent with its NEPA responsibilities in regard to environmental protection, or would prejudice its ability to make the required NEPA review and take whatever action may be appropriate in light thereof.

In undertaking this interim NEPA examination, the Commission has utilized factors analogous to those developed for determinations as to whether to suspend certain reactor construction permits and operating licenses pending completion of the section 102(2)(C) reviews. These determinations were required as a result of the decision of the Court of Appeals for the District of Columbia Circuit in the *Calvert Cliffs'* litigation.[1] The factors utilized are set forth in 10 CFR Part 50, Appendix D, section E.2. An additional factor has been added to recognize the subsequent decision of the Court of Appeals for the District of Columbia Circuit in *Coalition For Safe Nuclear Power* v. *AEC, et al.* (463 F. 2d 954), which involved judicial review of the interim NEPA review approach.

On July 20, 1973, the AEC issued its determination and findings, based on an interim environmental review, concerning the execution and implementation of the LMFBR Demonstration Plant contracts. This determination was made after review of comments received on a proposed determination published in the FEDERAL REGISTER on June 29, 1973. AEC determined, after considering the aforementioned factors, that the contracts could be executed and thereafter implemented during the limited period of the ongoing NEPA review of the entire LMFBR program (38 FR 19853).

The review encompassed in the present documents relates to the LMFBR base technology program. This program entails analytical, experimental and prooftesting activities and encompasses the construction and operation of experimental testing facilities to provide information on breeder plant design, plant systems and components, instrumentation and control, sodium technology, fuels and materials, fuel cycle, physics, and safety under operating conditions simulating those that will be encountered when LMFBR plants are in service. With limited exception, all contract work to be performed in connection with the LMFBR base program during the review period is a continuation of prior work.

[1] *Calvert Cliffs' Coordinating Committee, Inc.* v *Atomic Energy Commission*, 449 F. 2d 1109 (DC Cir 1971).

As applied to continuation of the LMFBR base program, the Commission, in making the determination at hand, has considered and balanced the following factors:

1. Whether it is likely that the continuation of LMFBR base program activities during the prospective review period will give rise to a significant adverse impact on the environment; the nature and extent of this impact, if any; and whether redress of any adverse environmental impact can reasonably be effected should modification, suspension or termination of program activities result from the NEPA environmental review.

2. Whether continuation of the LMFBR base program activities during the prospective review period would foreclose subsequent adoption of alternatives.

3. The effect of any delay in the LMFBR base program upon the public interest.

4. Whether the additional irretrievable commitment of resources to the LMFBR base program during the prospective review period might affect the eventual decision reached on the NEPA review.

To assist the Commission in its consideration of the foregoing factors, the Commission published in the FEDERAL REGISTER on October 26, 1973 (38 FR 29635) its proposed determination with a request that interested persons who desire to submit written comments or suggestions for Commission consideration do so on or before November 17, 1973.

Comments were received from two of the participants in the LMFBR Demonstration Plant Project, namely Commonwealth Edison Company and Project Management Corporation, and from J. G. Speth, Esquire, on behalf of the Natural Resources Defense Council and the Scientists' Institute for Public Information. The comments of Commonwealth Edison and the Project Management Corporation support AEC's Proposed Determination that continuation of the LMFBR base program during the NEPA review period is in the public interest. Mr. Speth contended that continuation of the base program with the ensuing expenditure of funds during the period of NEPA program review would effectively prevent AEC from making a determination other than to proceed with LMFBR program implementation at the conclusion of the review period, thereby foreclosing consideration of other energy options.

In assessing the four factors enumerated earlier, and in making its consequent Determination, the Commission has carefully considered all comments received. It is appropriate, however, to take special note of those comments which were adverse to this Determination, namely, those of Mr. Speth. In our judgment Mr. Speth's concern, summarized above, does not take appropriate account of several relevant considerations. To begin with, the existing technological base for the LMFBR program represents an investment of more than $1.3 billion over the past 20 years and the future monies projected to be expended on the overall program are about $5–6 billion. The planned expenditure of resources by AEC and other LMFBR program participants during the limited period of NEPA review (approximately $300 million), while not insubstantial, will not be of such magnitude in the context of prior and projected expenditures as to constitute an irrevocable commitment to the continuation of the base technology program. Nor, for the same reasons, would it affect the outcome of the NEPA review of the LMFBR program and the actions which may be appropriate in light thereof, including reorientation, delay or abandonment of the program, in whole or in part, or subsequent pursuit of alternative energy sources. It is worth additional note, in this connection, that the risk involved in the expenditure of such resources is not unique. Such risks are continually being taken in research and development efforts. As discussed in the Commission's Findings (at pp. 87–88), programs have been terminated where it has been found that their continuation is no longer justified, notwithstanding the substantial prior expenditure of time, effort and funds. This is addressed more fully in the supporting Findings.

The results of the Commission's examination of this matter in the light of all comments received are set forth in a document entitled, "Findings Supporting Determination in Regard to LMFBR Base Program Pending Preparation of a section 102(2)(C) NEPA Impact Statement." Copies of this document are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies may be obtained upon request, addressed to the United States Atomic Energy Commission, Washington, D.C. 20545, Attention: General Manager.

Based on the results of the foregoing examination, the Commission has determined that:

1. Continuation of the LMFBR base program during the period of preparation of the NEPA impact statement will not give rise to any significant adverse impact on the environment; and that the limited impact that may occur will be redressable should the full NEPA review of the program indicate that a course of action other than proceeding with the LMFBR program is advisable.

2. Subsequent adoption of program alternatives—including reorientation, delay or cessation of the program itself—would not be foreclosed by continuation of the LMFBR base program during the limited period of the NEPA review. All work performed in connection with this program can be terminated by AEC at any time.

3. Should continuation of the LMFBR base program be consistent with the outcome of the full NEPA program review, discontinuance of base program activities until the NEPA program review is completed would, adversely affect the public interest since (a) it could result in compromising program viability by the

loss of key management and engineering personnel in the many organizations involved in the program, and (b) it would result in delay in realizing the availability of a key energy option for the Nation, with significant adverse consequences in terms of increased program costs and substantial dollar penalties in higher costs of electricity.

4. The expenditure of resources by the AEC and the other program participants during the limited period of the NEPA review of the program (approximately $300 million), while not insubstantial, will not be of such magnitude, taken in relationship to monies already expended on the LMFBR program ($1.3 billion through fiscal year 1973) or monies projected to be expended during the course of completion of the LMFBR program ($5–6 billion), as to constitute an irrevocable commitment to the continuation of the base technology program; nor will it affect the eventual outcome of the NEPA review of the LMFBR program. Industrial participants have spent, and will continue to spend, their resources at their own risk since all base program activities are subject to alteration or termination pending the outcome of the NEPA program review. In the event the NEPA review suggests discontinuance of the base program in its presently projected dimensions, the accomplishments in design and analysis during this period will contribute to the technology of designing and constructing reliable components for nuclear power plants of all designs.

In summary, based on the results of the foregoing examination, the Commission has determined that the LMFBR base technology program may be continued during the limited period of the ongoing NEPA program review.

Dated at Washington, D.C., this 25th day of March 1974.

For the Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.74-7165 Filed 3-26-74;8:45 am]

[Docket No. 50-58]

OKLAHOMA STATE UNIVERSITY

Order Terminating Facility License

The Atomic Energy Commission ("the Commission") has found that Oklahoma State University's AGN-201 (Serial No. 102) nuclear research reactor previously located on its campus in Stillwater, Oklahoma, has been dismantled, decontaminated, and disposition made of the component parts and fuel, pursuant to the Commission's dismantling order dated July 13, 1972, in accordance with the Commission's regulations in 10 CFR, Chapter I, and in a manner not inimical to the common defense and security or to the health and safety of the public, and that termination of the license does not involve significant hazards considerations.

In accordance with the dismantling order and the safety evaluation issued in connection therewith dated July 13, 1972, the research reactor and the fuel have been removed and transferred to Tuskegee Institute in accordance with CPPR-117 issued March 23, 1973, to Tuskegee Institute. The former location of the reactor has been inspected by the Commission's Directorate of Regulatory Operations and, as required by the dismantling order dated July 13, 1972, Oklahome State University has submitted a report dated January 23, 1974, on radiation surveys of the facility which the Commission finds satisfactory.

Accordingly, pursuant to the application by Oklahoma State University dated May 26, 1971, and its request dated January 23, 1974, and Commission regulations, Facility License No. R-22 is hereby terminated as of the date of this order.

Also, Indemnity Agreement No. E-9 between Oklahoma State University and the Atomic Energy Commission, dated September 21, 1962, as amended, is hereby terminated as of the date of this order and concurrently Amendment No. 9 to Indemnity Agreement No. E-9 is being executed.

Date of issuance: March 19, 1974.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Operating Reactors Directorate of Licensing.

[FR Doc.74-6986 Filed 3-26-74;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

MARCH 25, 1974.

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 11–13, 1974, in Room 1046, 1717 H Street, NW., Washington, D.C.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public:

1. Thursday, April 11, 1974: 9:45 a.m.–11:15 a.m.—Meeting with AEC Regulatory Staff—The Committee will hear presentations and discuss matters related to reactor operating experience and licensing activities, including:

Browns Ferry Nuclear Plant Unit 1—Pressure relief valve operation.
Surry Power Station—Modification of high pressure piping restraints.
Indian Point Nuclear Generating Station Unit 2—Performance of modified feedwater piping.

5:00 p.m.–6:00 p.m.—Meeting on North Anna Power Station Units 3 and 4—The Committee will hear presentations and hold discussions with representatives and consultants of the Regulatory Staff and the Virginia Electric Power Company regarding the nature of the seismic faults at the site in connection with an application for a construction permit for this facility.

2. *Friday, April 12, 1974:* 9:15 a.m.–12:30 p.m.—*Millstone Nuclear Power Station Unit 3*—The Committee will consider the application for a construction permit for this plant. This will include presentations by and discussions with representatives and consultants of the AEC Regulatory Staff and the Applicants for this project.

2:00 p.m.–7:00 p.m.—*Alvin W. Vogtle Nuclear Plant Units 1, 2, 3 and 4*—The Committee will consider the application for a construction permit for this plant. This will include presentations by and discussions with representatives and consultants of the AEC Regulatory Staff and the Georgia Power Company.

Closed sessions will be held during the periods noted above, if required, to discuss proprietary information related to security plans for these facilities and to fuel element, design, fabrication, and operation including loss-of-coolant accident analysis in accordance with subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552(b)(4).

It should be noted that, in addition to the agenda items noted above, the Committee will hold other sessions not open to the public under the authority of subsection 10(d) of Public Law 92-463 (the Federal Advisory Committee Act), to consider the above applications and other matters. I have determined, in accordance with subsection 10(d) of Public Law 92-463, that it is necessary to close such portions of the meeting to protect classified documents and information (5 U.S.C. 552(b) (1) and (3)), and to protect the free interchange of internal views and to avoid undue interference with agency or Committee operation (5 U.S.C. 552(b)(5)).

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than April 3, 1974, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such written comments shall be based on documents related to the agenda items noted above, and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, and as follows:

NORTH ANNA NUCLEAR STATION

Office of Mr. Dean Agee
Executive Secretary
Board of Supervisors
Louisa County Courthouse
Louisa, Virginia 23093

MILLSTONE NUCLEAR STATION

Miss Margaret Walter, Librarian
Waterford Public Library
49 Rope Ferry Road
Waterford, Connecticut 06385

ALVIN W. VOGTLE PLANT

Burke County Library
Fourth Street
Waynesboro, Georgia 30830

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Committee.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Committee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting or portions of the meeting have been cancelled or rescheduled, and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on April 10, 1974, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m. daylight saving time.

(e) Questions may be propounded only by members of the Committee and its consultants.

(f) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) Persons desiring to attend portions of the meeting where proprietary information is being discussed may do so by providing, 7 days prior to the meeting, a copy of an executed agreement to safeguard this material.

(h) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., on or after June 12, 1974. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-7248 Filed 3-26-74;10:35 am]

[Docket No. 50-201]

NUCLEAR FUEL SERVICES, INC. AND NEW YORK STATE ATOMIC AND SPACE DEVELOPMENT AUTHORITY

License No. CSF-1; Applications for Amendments; Conversion to Full-Term Operating License; Time for Submission of Views on Antitrust Matter

Nuclear Fuel Services, Inc., and New York State Atomic and Space Development Authority (the applicants), have filed applications for amendments to License No. CSF-1, including any construction permit required for authorization to perform certain modifications to the West Valley Fuel Reprocessing Plant and authorization to operate the modified Facility for a term of 40 years. Pursuant to the Commission's order of November 13, 1973, published in the FEDERAL REGISTER on November 20, 1973 (38 FR 31985), the applications will be processed in accordance with the requirements of section 103 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations pertaining to applications for a license pursuant to section 103 of the Act.

An application was tendered by Nuclear Fuel Services, Inc., on October 3, 1973. Following a preliminary review for completeness, it was amended and resubmitted on December 13, 1973. The application for the New York State Atomic and Space Development Authority was submitted on December 13, 1973. The applications were docketed on December 17, 1973.

The West Valley Fuel Reprocessing Plant is located in the Western New York Nuclear Service Center in the town of Ashford, near Riceville, Cattaraugus County, New York, about thirty miles south of Buffalo. After modification, the reprocessing facility will have an operating capacity of approximately 750 metric tons of uranium per year.

A Note of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust aspects of the applications presented to the Attorney General for consideration shall submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attn: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, Regulation, on or before May 20, 1974.

The request should be filed in connection with Docket No. 50-201A.

Copies of the applications are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and at the Memorial Library of Little Valley, Main Street, Little Valley, New York.

The applicants have also filed, pursuant to the National Environmental Policy Act of 1969, and the regulations of the Commission in Appendix D to 10 CFR part 50, an environmental report dated December 13, 1973. The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations related to the proposed modifications and subsequent operation of the modified West Valley Fuel Reprocessing Plant is also being made available at the State Clearinghouse, New York State Office of Planning Services, 488 Broadway, Albany, New York 12207 and at the Southern Tier West Regional Planning Board, 303 Court Street, Little Valley, New York 14755.

After the report has been analyzed by the Commission's Director of Regulations or his designee, a draft environmental statement will be prepared by the Commission's Regulatory staff. Upon preparation of the draft environmental statement, the Commission, will among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the Regulatory staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Maryland, this 5th day of March 1974.

For the Atomic Energy Commission.

LELAND C. ROUSE,
Chief, Fuel Fabrication and Reprocessing Branch, Directorate of Licensing.

[FR Doc.74-6324 Filed 3-19-74;8:45 am]

[Docket Nos. STN 50-477, STN 50-478]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Receipt of Application for Site Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters

Public Service Electric and Gas Company (the applicant), on behalf of itself and Atlantic City Electric Company and Jersey Central Power & Light Company, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, which was docketed on March 1, 1974, for authorization to construct all necessary site related structures and to install two floating nuclear power plants, each of which incorporates a pressurized water reactor. An application filed by Offshore Power Systems for a license to manufacture these and other floating nuclear plants is currently under review. The floating nuclear plants will be manufactured in Jacksonville, Florida, and towed to selected sites. The Public Service Electric and Gas Company application was tendered on December 19, 1973. Following a preliminary review for completeness, the application was found acceptable for docketing on February 11, 1974.

The application has been docketed under one of the options of the Commission's standardization policy for nuclear power plants, wherein applications may be filed utilizing reactors manufactured at a location different from where they will eventually be located. Docket Nos. STN 50–477 and STN 50–478 have been assigned to the application and should be referenced in any correspondence relating to the application.

The proposed nuclear facilities, designated by the applicant as the Atlantic Generating Station, Units 1 and 2, are to be moored behind a protective breakwater in the Atlantic Ocean approximately 2.8 statute miles off the southeastern coast of New Jersey. Each unit is to be designed for initial operation at 3411 megawatts thermal and a net electrical output of approximately 1150 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before May 20, 1974. The request should be filed in connection with Docket Nos. STN 50–477A and STN 50–478A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and at the Stockton State College Library, Pomona, New Jersey 08240.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, an Environmental Report dated March 1, 1974. The report, which discusses environmental considerations related to the construction and operation of the proposed facilities, is being made available for public inspection at the aforementioned locations and at the Division of State and Regional Planning, Department of Community Affairs, P.O. Box 2768, Trenton, New Jersey 08625.

After the Environmental Report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission's Regulatory staff. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the Regulatory staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Maryland, this 7th day of March 1974.

For the Atomic Energy Commission.

KARL R. GOLLER,
Chief, Light Water Reactors Group 13, Directorate of Licensing.

[FR Doc.74–6323 Filed 3–19–74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 26528; Order 74–3–97]

AMERICAN AIRLINES, INC.

Order of Suspension and Investigation Regarding Fuel-Related Freight Rate Surcharge

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 22d day of March, 1974.

By tariff revisions filed February 22 and marked to become effective March 24, 1974, American Airlines, Inc. (American) proposes a 6 percent surcharge applicable to bulk minimum charges, general and specific commodity bulk and container rates, and small package charges between points in the 48 contiguous states. American's proposal utilizes a rule published in the rules tariff [1] including a 6 percent surcharge table, and applicable to freight rates and charges published in the various tariffs.[2]

In support of its proposal, American contends that, inter alia, the surcharge is required to offset the rapidly escalating costs of jet fuel; the average fuel cost for the domestic industry in January 1974 was 17.23 cents per gallon as compared with only 11.75 cents in fiscal year 1973—an increase of 47 percent; fuel surcharges have been recognized by the Federal Power Commission, and, only recently the Interstate Commerce Commission allowed truck rate surcharges to offset the increased cost of fuel; by ER–831, the Board provided for automatic fuel price increases for Logair and Quicktrans rates, and recommended a surcharge for overseas and foreign military rates in EDR–263; the Board has allowed fuel surcharges to become effective in certain charter tariffs; the proposed surcharge will not cause windfall profits for the carriers; the increase is based only upon known currently incurred costs and does not involve any projected or hypothetical costs; the proposal will not permit the carrier to recover any of the other cost increases that are presently being incurred; and, between June 1973 and January 1974, the domestic industry absorbed about $85 million in higher fuel costs.

American has made a showing of increased costs based upon industry figures. The Board has been aware of the unprecedented increases of fuel prices in recent months and believes that some adjustment in rates and charges is warranted to help offset these increased costs.

The carrier, however, has made no showing that the resultant increased rates for the several types of traffic are in line with costs in various markets. Based upon data available to the Board, the following increased rates are found to exceed costs:

1. Westbound bulk general commodity rates for markets with lengths of haul of 1,800 miles and over;

2. Westbound general commodity container rates and charges for hauls of 750 miles or over for container Types A, LD–7, LD–5, and D, hauls 2,200 miles or over for B–2's, and hauls 1,300 miles and over for other container types;

3. Eastbound general commodity rates and charges for Type D, LD–5, and LD–7 for hauls 750 miles or over;

4. Bulk specific commodity rates, westbound, in markets with lengths of haul 2,100 miles or over; and

5. All bulk rates on human remains.

In view of the foregoing and upon consideration of all relevant factors, the Board finds that American's proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that this proposal should be suspended pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That: 1. An investigation be instituted to determine whether the charges and provisions for account of the carrier "AA" in Rule No. 59 on 6th, 7th and 8th Revised Pages 29 and 30 of Airline Tariff Publishers, Inc., Agent's C.A.B. No. 96, and rules, regulations, or practices affecting such charges and provisions are, or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charges and provisions, and rules, regulations, or practices affecting such charges and provisions;

2. Pending hearing and decision by the Board, the charges and provisions for account of the carrier "AA" in Rule No. 59 on 6th, 7th, and 8th Revised Pages 29 and 30 of Airline Tariff Publishers, Inc., Agent's C.A.B. No. 96 are suspended and their use deferred to and including June 21, 1974, unless otherwise ordered by the Board, and that no changes be made there in during the period of suspension, except by order or special permission of the Board;

3. The proceeding herein, designated Docket 26528, be assigned before an Administrative Law Judge of the Board at a time and place to be designated; and

4. Copies of this order shall be filed with the tariff and served upon American Airlines, Inc., which is hereby made a party to Docket 26528.

[1] Airline Tariff Publishers, Inc., Agent, C.A.B. No. 96.

[2] The proposed surcharge applies in connection with rates and charges published in Airline Tariff Publishers, Inc., Agent, Tariffs C.A.B. No. 131, 140, 169, and 208.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-7079 Filed 3-26-74;8:45 am]

[Docket No. 25427]

LAKER AIRWAYS LTD.

Notice of Reassignment of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the oral argument in this proceeding heretofore assigned to be held before the Board on May 15, 1974, is hereby reassigned to be held on April 17, 1974, at 10 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., March 22, 1974.

[SEAL] RALPH W. WISER,
Chief Administrative Law Judge.

[FR Doc.74-7082 Filed 3-26-74;8:45 am]

[Docket No. 26352; Order 74-3-101]

SOUTHERN AIRWAYS, INC.

Order To Show Cause Regarding Application for Amendment of Certificate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of March 1974.

On January 25, 1974, Southern Airways, Inc. (Southern), filed an application (Docket 26352) to redesignate the intermediate point Florence-Sheffield-Tuscumbia, Alabama, on segments 2 and 4 of Route 98, as Muscle Shoals-Florence-Sheffield-Tuscumbia, Alabama. In addition, Southern filed a petition seeking issuance of an order to show cause why its certificate should not be amended as requested.

No answers in opposition were filed. In support of the application, Southern submitted a letter dated January 14, 1974, from the Muscle Shoals Council of Local Governments requesting Southern to use the designation "Muscle Shoals, Ala." for all purposes in identifying air service to the area. The letter was signed by the Mayor of each concerned community, i.e., Florence, Sheffield, Tuscumbia and Muscle Shoals. Southern states that if the requested redesignation is granted, it will utilize the single identification "Muscle Shoals" to the extent practicable.[1]

Upon consideration of the application and all the revelant facts, we tentatively find and conclude that the public convenience and necessity require the amendment of Southern's certificate for Route 98 so as to change the name of the intermediate point "Florence-Sheffield-Tuscumbia" to "Muscle Shoals-Florence-Sheffield-Tuscumbia."

In support of our tentative conclusion, we find that Southern Airways was authorized to serve Florence-Sheffield-Tuscumbia, Ala., on a temporary basis in the *Southeastern Area Local-Service Case*, 30 C.A.B. 1318 (1959);[2] that Southern inaugurated service at Florence-Sheffield-Tuscumbia through the Muscle Shoals Airport on February 26, 1960, and has continuously served the area through the same airport since that date; and that the requested redesignation will help to alleviate confusion on the part of the traveling public as to the availability of air service at Florence-Sheffield-Tuscumbia and, particularly, at Muscle Shoals.

Interested persons will be given 20 days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of facts or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and amending Southern's certificate of public convenience and necessity for Route 98 so as to redesignate the intermediate point "Florence - Sheffield - Tuscumbia, Ala.," as "Muscle Shoals-Florence-Sheffield-Tuscumbia, Ala.";

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 20 days after the service of a copy of this order, file with the Board, and serve upon all persons made parties to this proceeding a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the findings and conclusions set forth herein; and

5. A copy of this order shall be served upon the cities of Florence, Sheffield, Tuscumbia and Muscle Shoals, Alabama; Southern Airways; and the Airport Manager, Muscle Shoals Airport, who are hereby made parties to this proceeding.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-7080 Filed 3-26-74;8:45 am]

[1] The communities of Florence, Sheffield and Tuscumbia will continue to be shown in Southern's schedules and cross-referenced to "Muscle Shoals" as shown currently in the *Official Airline Guide*.

[2] The authority to serve Florence-Sheffield-Tuscumbia was made permanent in the proceeding entitled *Renewal of Southern Airways, Inc., Segments 1(b), 6, 8, 9, and 10, and Anniston, Alabama on Segment 1* (43 C.A.B. 498 (1966)).

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Administrator-Program Operations, Farmers Home Administration.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6968 Filed 3-26-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Assistant Deputy Administrator, Farmers Home Administration.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6973 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE ARMY

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Army to fill by noncareer executive assignment in the excepted service the position of Deputy Under Secretary of the Army (International Affairs), Office, Under Secretary of the Army, Office, Secretary of the Army.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6974 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE ARMY

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Army to fill by noncareer executive assignment in the excepted service the position of Deputy Under Secretary of the Army, Office, Under Secretary of the Army, Office, Secretary of the Army.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6969; Filed 3-26-74;8:45 am]

FEDERAL EMPLOYEES PAY COUNCIL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Federal Employees Pay Council will meet at 2 p.m. on Wednesday, April 3, 1974, to continue discussions on the fiscal year 1975 comparability adjustment for the statutory pay systems of the Federal Government.

In accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, it was determined by the Director of the Office of Management and Budget and the Chairman of the Civil Service Commission, who serve jointly as the President's Agent for the purposes of the Federal pay comparability process, that this meeting of the Federal Employees Pay Council would not be open to the public.

For the President's Agent.

RICHARD H. HALL,
Advisory Committee Management Officer for the President's Agent.

[FR Doc.74-6967 Filed 3-26-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary for Drug Abuse Prevention, Office of the Assistant Secretary for Health and Scientific Affairs, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6975 Filed 3-26-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Deputy Commissioner, Rehabilitation Services Administration, Social and Rehabilitation Service.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6971 Filed 3-26-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Assistant Director, Urban Program Coordination, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6976 Filed 3-26-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Director, Operation BREAKTHROUGH, Assistant Secretary for Research and Technology.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6977 Filed 3-26-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6978 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary—Program Development and Budget, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6979 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor for Procurement and Patents, Office of the Solicitor.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6980 Filed 3-26-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Associate Solicitor (General Law), Office of the Solicitor.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6970 Filed 3-26-74;8:45 am]

DEPARTMENT OF JUSTICE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil

Service Commission revokes the authority of the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Deputy Director for Field Operations, Office for Drug Abuse Law Enforcement, Office of the Attorney General.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6981 Filed 3-26-74;8:45 am]

DEPARTMENT OF JUSTICE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Chief, Fraud Section, Criminal Division.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6982 Filed 3-26-74;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Deputy General Counsel, Office of the General Counsel.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6972 Filed 3-26-74;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Director, Intergovernmental Relations Division, Office of Program Review.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6983 Filed 3-26-74;8:45 am]

PRESIDENT, FEDERAL CITY COLLEGE

Notice of Listing of Manpower Shortage

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission has found effective March 12, 1974, that there is a manpower shortage for the single position of President, Federal City College. The appointee may be paid for the expense of travel and transportation to his first post of duty.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6966 Filed 3-26-74;8:45 am]

VETERANS ADMINISTRATION

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Veterans Administration to fill by noncareer executive assignment in the excepted service the position of Assistant Deputy Administrator, Office of the Assistant Deputy Administrator, Office of the Administrator.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.74-6984 Filed 3-26-74;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

SHOCK, FIRE, AND OTHER HAZARDS FROM TELEVISION RECEIVERS

Notice of Public Hearing

Correction

In FR Doc. 74-6475 in the issue of Friday, March 22, 1974, make the following change.

On page 10931, in the table under paragraph B of main paragraph IV., the first entry under the heading "Number of deaths" should be changed from "0" to "3".

ENVIRONMENTAL PROTECTION AGENCY

AMCHEM PRODUCTS, INC.

Notice of Extension of Temporary Tolerances

Amchem Products, Inc., Ambler, PA 19002, was granted temporary tolerances for negligible residues of the herbicide *N-sec*-butyl-4-*tert*-butyl-2,6 dinitroaniline in or on cottonseed and soybeans at 0.1 part per million on March 26, 1973, in connection with Pesticide Petition 2G1285 (notice was published in the FEDERAL REGISTER of March 30, 1973, (38 FR 8301)).

The petitioner has requested a 1-year extension of the temporary tolerances to obtain additional experimental data. It is concluded that such extension of the temporary tolerances for residues of the herbicide in or on cottonseed and soybeans at 0.1 part per million will protect the public health. A condition under which these temporary tolerances are extended is that the herbicide will be used in accordance with the temporary permit which is being issued concurrently and which provides for distribution under the Amchem Products, Inc. name.

As extended, these temporary tolerances expire March 26, 1975.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038).

Dated: March 18, 1974.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-6997 Filed 3-26-74;8:45 am]

BASF WYANDOTTE CORP.

Notice of Extension of Temporary Tolerance

BASF Wyandotte Corp., 100 Cherry Hill Road, Post Office Box 181, Parsippany, NJ 07054, was granted a temporary tolerance for residues of the herbicide bentazon (3-isopropyl-1*H*-2,1,3-benzothiadiazin(4)-3*H*-one-2,2-dioxide) in or on the raw agricultural commodity soybeans at 0.05 part per million on March 30, 1973, in connection with Pesticide Petition No. 3G1309 (notice was published in the FEDERAL REGISTER of April 5, 1973 (38 FR 8691)). The temporary tolerance expires March 30, 1974.

The firm has requested a 1-year extension of the temporary tolerance to obtain addition experimental data. It is concluded that this extension of the temporary tolerance of 0.05 part per million for residues of the herbicide in or on soybeans will protect the public health. A condition under which this temporary tolerance is extended is that the herbicide will be used in accordance with the temporary permit which is being issued concurrently and which provides for distribution under the BASF Wyandotte Corp. name.

As extended, this temporary tolerance expires March 30, 1975.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038).

Dated: March 18, 1974.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-6998 Filed 3-26-74;8:45 am]

MOTOR VEHICLE EXHAUST EMISSION RETROFIT DEVICES

Voluntary Retrofit Evaluation Program

Notice is hereby given that the Environmental Protection Agency seeks public comment on proposed motor vehicle exhaust emission retrofit device evaluation protocols.

The air quality implementation plans approved or promulgated by the Environmental Protection Agency for a number of states pursuant to section 110 of the Clean Air Act include provisions for the implementation of programs to retrofit emission control devices to motor vehicles presently in use.

The basic technology for such devices is essentially proven. For each category of devices, either all or the major part of the preliminary development work has been done, and individual devices in the category should be ready for widespread commercial use by the time the plans require this. To ensure this, however, the work of converting the proven basic technology into satisfactory commercially available and mass-produced devices must be pursued vigorously. In particular, further testing of such devices in the same or almost the same form as proposed for commercial use is called for. This will assist the individual states for which retrofit programs are required in selecting the specific devices which will be made eligible for installation to comply with the applicable retrofit requirements.

To provide such test data, and to avoid unnecessary duplication of data gathering and testing programs, the Environmental Protection Agency proposes to establish a voluntary retrofit evaluation program. Under the voluntary evaluation program, developers or marketers of individual retrofit emission control devices would arrange with independent testing laboratories for testing of their devices according to procedures published by the Environmental Protection Agency. Such testing would be at the expense of the device proponent. The Environmental Protection Agency would maintain cognizance over such testing programs, and would evaluate and confirm the results in its own laboratory as necessary. The results of all evaluations under the program would be published by the Environmental Protection Agency for use by states and other interested parties.

Proposed protocols for the conduct of this voluntary retrofit evaluation program are set forth below for public comment. Interested persons may submit written comments on these proposed protocols (in quadruplicate) to the Environmental Protection Agency, Office of Mobile Source Air Pollution Control (AW 455), 401 M Street SW., Washington, D.C. 20460. All relevant comments received not later than May 13, 1974, will be considered in the preparation of final protocols for the voluntary program.

Comments received will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Room 329 C, Washington, D.C. 20460.

Dated: March 15, 1974.

JOHN QUARLES,
Acting Administrator.

1.0 *General provisions.*

1.1 *Program Goals.* The purpose of this program is to provide a standardized and centralized evaluation program to compile technical data on various exhaust emission retrofit devices. The program does not include test procedures suitable for the evaluation of fuels, fuel additives, refueling loss retrofit devices, or evaporative emission control retrofit devices.

Data generated under this program will be evaluated by the Environmental Protection Agency and published for use by those authorities, state and local, responsible for the implementation of transportation controls to assist in the achievement of ambient air quality goals. It should be stressed that the role of this program will be the generation, analysis, and dissemination of technical data, and not one of approval or certification of retrofit devices.

The program will primarily address the emission control potential, durability, and driveability and fuel consumption effects of specific retrofit devices presented for evaluation. Multiple vehicle testing will allow statistical analysis of the test results. Testing is intended to be performed at independent commercial testing laboratories, and will be subject to monitoring and inspection by the Environmental Protection Agency. All costs incurred in the evaluation other than those of the Environmental Protection Agency's participation will be the responsibility of the applicant for evaluation.

1.2 *Eligibility for participation.* Participation in this evaluation program will be available to any individual or company who agrees to follow the procedures set forth in these protocols. Failure to conform to any aspect of these protocols, without the approval of the Environmental Protection Agency, may be interpreted by the Environmental Protection Agency, as withdrawal from participation in the program.

1.3 *Applicant's responsibility.* Each applicant for evaluation under this program will be responsible for the following:

(a) Submission of an application, of specified format, to the Environmental Protection Agency prior to initiation of the evaluation. Each application shall include summaries of any information available to the applicant concerning:

(i) whether or not the device or system in its operation or function causes a motor vehicle equipped with that device or system to emit into the ambient air any substance (other than hydrocarbons, carbon monoxide, oxides of nitrogen, or normal atmospheric constituents such as oxygen, nitrogen, or water vapor) in a quantity differing from that emitted in the operation of the motor vehicle without such device or system, and

(ii) whether or not the device or system in its operation or function or malfunction results in any unsafe condition endangering the motor vehicle or its occupants or persons or property in close proximity to the vehicle.

(b) Arrangement with independent testing laboratories for testing necessary for all phases of the evaluation,

(c) Payment of all costs incurred in the evaluation except for the costs of Environmental Protection Agency participation,

(d) Submisssion of progress reports and notifications to the Environmental Protection Agency as specified in these protocols, and

(e) Submission of a final report, of specified format, to the Environmental Protection Agency promptly after completion of the evaluation (details in section 7.2).

1.4 *Definitions.* (a) Except as specifically defined below, all terms used in these protocols which are defined in the Clean Air Act (42 U.S.C. 1857) or Subpart A of Title 40, Part 85 of the Code of Federal Regulations shall have the meanings provided therein.

(b) "Retrofit" means the addition or removal of an item of equipment, or a required adjustment, connection, or disconnection of an existing item of equipment, for the purpose of reducing emissions.

(c) "Light duty vehicle" means, for the purpose of these protocols, a motor vehicle other than a motorcycle whose gross vehicle weight is 6000 pounds or less. This class includes both passenger cars and light trucks.

(d) "Medium duty vehicle" means, for the purpose of these protocols, a motor vehicle whose gross vehicle weight is greater than 6000 but not more than 10,000 pounds.

(e) "Baseline configuration" means the unretrofitted test configuration after appropriate tune-up maintenance has been performed.

(f) "Parametrically adjusted configuration" means the test configuration after adjustment of engine parameters to the retrofit specifications, but *excluding* retrofit hardware installation.

(g) "Retrofitted configuration" means the test configuration after adjustment of engine parameters to the retrofit specifications and after all retrofit hardware has been installed.

(h) "Zero device-miles" means that period of time between retrofit installation and the accumulation of 50 miles of vehicle operation after installation.

(i) "Emission data fleet" means a fleet of vehicles tested at "zero device-miles" to determine the average emission reduction associated with the retrofit device.

(j) "Durability fleet" means a fleet of vehicles operated for mileage accumulation used to assess deterioration effects associated with the retrofit device.

(k) "Federal emission test procedures" means the test procedures specified in § 85.075–7 through § 85.075–27 of Title 40, Chapter I, Part 85 of the Code of Federal Regulations in effect on the date of the adoption of these protocols, except

as those procedures are modified in these protocols.

2.0 *Emission test procedures.*

2.1 *Light duty vehicle emission testing.* For the purpose of evaluation under these protocols, testing will utilize a modified 1975 Federal emission test procedure. The following modifications will be allowable to the Federal emission test procedures for evaluation of light duty vehicles under these protocols:

(a) No evaporative emission loss need be measured (with the exception of systems modifying or disconnecting existing evaporative control devices or systems in such a manner as would be expected to adversely affect their evaporative emission control performance).

(b) Vehicle pre-conditioning shall consist of operation of the vehicle through one hot-start LA–4 driving cycle. This preconditioning must be done at least 12 hours before but no earlier than 24 hours before the emission test.

(c) While the test fuel must meet the specifications outlined in the Federal emission test procedures, fuel conditioning as specified for evaporative emission test procedures is not required.

2.2 *Medium duty vehicle emission testing.* For the purpose of evaluation under these protocols, emission testing of medium duty vehicles will be performed using a modification of the Federal emission test procedures for light duty vehicles. The following modifications to the Federal emission test procedures shall be employed for medium duty vehicle retrofit evaluation under these protocols:

(a) No evaporative emission loss need by measured.

(b) Vehicle pre-conditioning may be limited to operation of the vehicle through one hot-start LA–4 driving cycle. This preconditioning must be done at least 12 hours but no earlier than 24 hours before the emission test.

(c) While the test fuel must meet the specifications outlined in the Federal emission test procedures, no heat build or fuel conditioning is required.

(d) The following equation and table shall be used to determine inertia test weight and power absorption for the emission test:

Inertia weight = 500 lbs. if gross vehicle weight minus curb weight equals 2000 lbs
curb weight + 1000 lbs. if gross vehicle weight minus curb weight is greater than 2000 lbs. but not more than 4000 lbs.
1500 lbs. if gross vehicle weight minus curb weight is greater than 4000 lbs.

(The inertia weight should be rounded off to the closest 500 pound increment).

Inertia weight:	*Actual absorbed HP*
4,500	13.1
5,000	17.9
5,500	22.7
6,000	27.5
6,500	32.3
7,000	37.1
7,500	41.9
8,000	46.7
8,500	51.5
9,000	56.3
9,500	61.1
10,000	65.9

2.3 *Emission test configurations.* In order to measure the effectiveness (at zero device-miles) of a retrofit device or system at least two, and in some cases three, vehicle configurations will be tested.

The first test configuration is a baseline test. In this test the baseline or unretrofitted vehicle emissions will be measured.

The second test may be required at the discretion of the Environmental Protection Agency for the following reason: If a device concept uses both hardware and engine parameter modifications jointly to achieve emission control, it is necessary to distinguish the hardware effects from the parameter adjustments effects. If, in the Environmental Protection Agency's judgment based on a review of the application for evaluation, the combined effects of retrofit hardware installation and parametric adjustment could be substantially duplicated by parametric adjustment alone, then the Environmental Protection Agency may specify a second test, defined as the parametrically adjusted configuration, to evaluate such adjustment exclusive of the retrofit hardware.

The third test will evaluate the full retrofit system installed on the vehicle.

3.0 *Durability test procedures.*

3.1 *Test configuration.* Vehicles included in the durability fleet will be subjected, at zero device-miles, to the same test sequence as is specified in section 2.3. Subsequently they will be tested at 3,000 device-mile intervals, up to and including the final mileage point of 15,000 device-miles.

Testing at these mileage points will be performed with the vehicle equipped with the full retrofit system. Subsequent to the 15,000 mile test, the vehicle will be tuned as necessary and the retrofit adjusted to the developer's specifications. The fully restored retrofitted configuration will then be tested. The retrofit system will then be removed from the vehicle and the vehicle set to manufacturer's specifications. A tuned baseline test will then be conducted.

3.2 *Mileage accumulation procedure.* Mileage accumulation procedures shall follow those outlined in the Federal emission test procedures. Both light and medium duty evaluations should use the light duty mileage accumulation schedule or a suitable alternate procedure approved by the Environmental Protection Agency. Alternate accumulation procedures may be approved by the Environmental Protection Agency prior to initiating durability testing. Fuel used in the mileage accumulation shall be a commercial fuel available in the retail market.

3.3 *Maintenance.* Maintenance during the durability portion of this evaluation will be allowed and can best be considered in three separate categories:

(a) Normal scheduled vehicle maintenance

(b) Unscheduled vehicle maintenance

(c) Retrofit maintenance

Normal scheduled vehicle maintenance can be defined as those periodic services vehicle operators do or should perform during the life of their vehicles. These procedures are specified in the original owner's manual supplied to the owner at the time of new vehicle purchase. In general they will include:

Oil changes & lubrication
Oil filter changes
Normal tune-up items:
(1) spark plugs
(2) condenser
(3) rotor
(4) distributor contact points
Air Cleaner Element
Inspect PCV
Dwell & Timing check
Charging circuit check

In the event that periodic maintenance items, other than those listed above, are specified by the manufacturer of the durability vehicle the manufacturer's recommendations should be followed. In this eventuality the Environmental Protection Agency shall be notified of the intent to perform additional periodic maintenance. This notification should detail both the nature and frequency of the additional planned maintenance.

Because the vehicles used for durability evaluation in this program will probably have considerable mileage accumulation and unknown maintenance prior to inclusion in the program, it can be anticipated that certain vehicle and engine failures may occur. These failures may be unrelated to the retrofit device. Unscheduled maintenance will be allowed only in those cases where poor vehicle operation has been indicated by the driver of the vehicle. With the exception of the following, the Environmental Protection Agency shall be notified of the failure and must approve the maintenance prior to correction of the problem.

Tire replacement (same size)
Vehicle body repairs (remote from engine and retrofit)
Windshield wipers
Fluid levels unrelated to retrofit
Brakes
Hoses unrelated to retrofit
Belts unrelated to retrofit
Suspension failures
Wheel alignment
Steering
Wheel bearings
Non-engine electrical system

No unscheduled maintenance of the engine or drivetrain may be made without Environmental Protection Agency approval. At the time of notification of a need for unscheduled maintenance the Environmental Protection Agency may require before and after maintenance emission tests. If any questionable failure occurs, a general rule to notify the Environmental Protection Agency prior to performance of corrective maintenance will be the safest course of action.

Certain retrofit devices may require periodic maintenance. These maintenance requirements shall be detailed in the application to the Environmental Protection Agency. Maintenance of the retrofit device shall be performed periodically as specified by the retrofit developer. Emission tests should be performed before and after this maintenance.

A log of *all* maintenance shall be kept for every vehicle. These logs will be summarized and reported to the Environ-

mental Protection Agency in the final report.

4.0 *Other test procedures.*

4.1 *Driveability effects.* It is important to assess the impact which installation of a specific retrofit device may have on vehicle driveability. Driveability assessment of the baseline configuration, of the parametric adjustment configuration (if required), and of the fully retrofitted configuration shall be conducted at zero device-miles for all vehicles included in the durability fleet. Driveability evaluation procedures to be used are presented in Appendix A.

4.2 *Fuel consumption effects.* Part of the cost or benefit of a retrofit system can stem from that system's effect on fuel consumption. Carbon balance fuel consumption shall be calculated for all emission tests in all configurations during the evaluation program. Details of the carbon balance calculation are presented in Appendix B.

4.3 *Specialized testing.* Certain individual retrofit devices, due to their specific characteristics, may change engine operation in such a way as to potentially impact engine durability or cause potentially hazardous operational characteristics. It can be visualized, for instance, that dangerous temperature conditions, high exhaust valve temperatures or excessive noise levels may be encountered for certain devices. Evaluation of these problem areas will be an essential part of the retrofit program. In general, specific evaluations will be limited to the durability fleet. The Environmental Protection Agency will specify any additional evaluations required for a particular device subsequent to the receipt of the retrofit evaluation application. These evaluations will be based on a technical review of the operating principles of the specific device.

5.0 *Vehicle fleet selection.*

5.1 *Emission data fleet.* In order to compile data on the effectiveness of specific devices which will ultimately allow state authorities to make realistic device approval decisions, the following statistical goals have been established for this program. It is desired that the experiment allow determination of the mean percent reduction (or increase) of hydrocarbons, carbon monoxide, and oxides of nitrogen within a band of ± 5 percent with 90 percent confidence. For example, the results of a particular evaluation might state that the mean hydrocarbon reduction associated with the device is a measured reduction of 25 percent within a band of 20 to 30 percent with 90 percent confidence.

An analysis of the variance experienced in various device evaluations previously performed by the Environmental Protection Agency indicates that a maximum sample size of 113 vehicles should be needed to obtain the desired statistical assurance.

To determine the sample size required for a particular device evaluation, two approaches are available to the applicant. First, he may elect to use a sample size of 113 vehicles. Alternatively he may conduct a preliminary device evaluation using a 10 vehicle fleet approved by the Environmental Protection Agency. The preliminary test data will be analyzed for variance by the Environmental Protection Agency and a new sample size will be determined which could be 113 or fewer vehicles. The data from the 10 vehicles can be included in the overall analysis. To assure adequate test vehicle coverage of the in-use vehicle population a minimum of 25 vehicles will be tested. Discussion of the statistical test to be used for fleet sizing can be found in Appendix C.

Once the sample size has been determined, the Environmental Protection Agency will specify the test fleet makeup by model, model year, engine displacement and transmission type. The sample of vehicles to be tested will be representative of the distribution of vehicles in the national population to which the device applies. Because of their limited availability and relatively small impact on air quality, no vehicles more than ten years old will be selected for evaluation. As appropriate, the oldest model year represented will be weighted to account for those older vehicles still in use.

The above criteria apply to both light and medium duty evaluations.

5.2 *Durability fleet.* A fleet of ten vehicles whose composition has been approved by the Environmental Protection Agency shall be operated and tested through 15,000 miles of device operation. This criterion applies for both light and medium duty evaluations.

5.3 *Specialized testing.* Unless otherwise specified by the Environmental Protection Agency, the durability fleet vehicles will be used for those specialized analyses necessary to evaluate potential detrimental effects of retrofit installation and operation. These may include temperature measurement, cold environment starting, time to coolant boil over at idle, noise level, etc. Requirements and details will be specified by the Environmental Protection Agency after review of the application.

5.4 *Test vehicle tune-up.* All vehicles employed in evaluations within this program will be adjusted to the vehicle manufacturer's specifications prior to conducting baseline testing. The following items may be replaced as necessary with suitable OEM replacements:

Oil
Oil Filter
Air Cleaner Element
Spark Plugs
Condenser
Rotor
Distributor Points
Ignition Wires
Distributor Cap
PCV Valve

No adjustments or replacements can be made to any internal engine component. Exhaust systems must be repaired to provide a leak-free system. A close visual scrutiny of each vehicle in the program must be made to assure this leak-free condition. Replacement of exhaust systems should use OEM parts and at least 50 miles of break-in should be provided to remove cutting oil residue.

5.5 *Vehicle rejection.* No vehicle within the confines of the selection criteria may be rejected from the program once it has been received by the test facility unless such gross mechanical defects are exhibited as would severely threaten its ability to complete the testing sequence. While diagnostic or inspection tests may be conducted, in *no* case will vehicles be rejected due to the results of engine diagnostic tests or inability to adjust engine parameters to the automobile manufacturer's or retrofit installation specifications.

6.0 *Device installation.* In order to assess the requirements for proper device installation through this evaluation the following procedures should be followed:

(a) Installers should be selected by the testing laboratory who have had no previous experience with installation of the specific system under evaluation.

(b) The applicant will design and conduct necessary training sessions and supply printed instructions to the installers.

(c) The applicant will not directly participate in the installation task.

(d) Anomalies encountered during installation should be corrected. Details on the problem and actions required to avoid the problem in future installations shall be submitted in the final report.

(e) Accurate records of the time required for installation and tools or equipment used for installation must be kept.

7.0 *Program administration.*

7.1 *Application format.* In order to compile relevant data on specific retrofit control techniques and to allow timely response by the Environmental Protection Agency to requests for evaluation, a standard application format should be used. Submissions should be made to:

Director, Emission Control Technology Division
Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, Michigan 48105
Attn: Retrofit Evaluation

Three weeks should be allowed for analysis of the submission and response. As indicated in other sections of this document, evaluation may not proceed prior to the Environmental Protection Agency's approval of test fleets, specification of necessity of parameter testing and other testing requirements, and approval of proposed maintenance.

To facilitate rapid response by the Environmental Protection Agency, the application should concisely and yet fully detail the following: (It is recommended that the topics be organized in the same manner as the following outline.)

APPLICATION FORMAT

I. Device or Control Technique Description
A. Operational theory
B. Hardware description
1. Component description
2. Connections and interfaces to vehicle and/or engine
3. Sensors or modulators and calibration and trigger points
4. Materials used in device construction
5. Parametric adjustments

C. Pictorials showing installation
D. Retail cost estimate (installed)
E. Useful life (method of testing and data)
II. Device Applicability
A. Applicability to vehicle population
1. By make and model
2. By model year
3. By engine
B. Exceptions (e.g., multiple carburetion, fuel injection, 4 cylinder engines, trailer towing, high speed, etc.)
III. Installation Requirements
A. Printed installation instructions
B. Mechanic training required
C. Tools and/or equipment required
D. Estimated installation time
E. Parametric engine adjustments
F. Diagnotic procedures (special equipment)
VI. Device Maintenance
A. Frequency
B. Maintenance description
C. Time required
D. Tools, equipment, materials
E. Estimated cost to consumer
F. Diagnostic procedures
V. Existing Test Data, including information required by Section 1.3(a) of these protocols
IV. Proposed Testing Laboratory
A. Facility description
B. Capabilities
C. Calibration and maintenance procedures

7.2 *Reporting format.* In order for the Environmental Protection Agency to quickly analyze and disseminate the results of retrofit evaluations, the following report format should be employed and submitted to:

Director, Emission Control Technology Division
Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, Michigan 48105
Attn: Retrofit Evaluation

REPORT FORMAT

I. Retrofit Device Effectiveness Data (data fleet)
A. Summary
1. Applicability (device)
2. Observed mean percent reduction (See Appendix C)
B. Test Fleet Description (tabular)
1. Make and model
2. Model year
3. Engine (CID)
4. Carburetion
5. Transmission
6. Odometer mileage
7. Program car number
8. Vehicle serial number
C. Emission Data
1. Program car number
2. Baseline HC, CO, CO_2, NO^x, fuel
3. Parametric HC, CO, CO_2, NO^x, fuel consumption (if required)
4. Retrofitted HC, CO, CO_2, NO , fuel consumption
D. Discussion of Statistical Analysis (See Appendix C)
II. Durability Results (durability fleet)
A. Summary
1. Individual plots of HC, CO, NO^x, and fuel consumption versus mileage for the retrofitted vehicles.
2. Device deterioration factors for individual vehicles and fleet average (See analysis technique in Appendix C)
B. Test Fleet Description (tabular)
1. Make and model
2. Model year
3. Engine (CID)
4. Carburetion
5. Transmission
6. Odometer mileage (begin and end)
7. Program car number
8. Vehicle serial number
C. Emission Data versus Mileage (tabular)
1. Program car number
2. Retrofitted configuration HC, CO, CO_2, NO^x, and fuel consumption versus mileage
3. Percent reduction of the fully retrofitted configuration as compared to baseline after the 15,000 mile tune-up.
D. Vehicle and Device Installation and Maintenance
1. Detailed description of all maintenance performed
2. Emission test results, where requested, before and after maintenance
3. Installation time requirements
IIII. Results of Other Testing
A. Driveability
B. Special tests

7.3 *EPA Monitoring.* In addition to those aspects of normal contact with the applicant discussed in previous sections, the Environmental Protection Agency will, to the extent possible, monitor the progress and execution of the retrofit evaluations. This monitoring may include announced and unannounced visits to testing sites, checks of raw data files, and limited correlation and/or confirmatory testing in the Environmental Protection Agency's Ann Arbor laboratory (vehicle to be shipped to Ann Arbor at applicant's expense if required by the Environmental Protection Agency).

Deficiencies will be reported to both the laboratory and to the applicant in order to facilitate correction. If necessary, however, caveats concerning the validity of the test results will be added to the test report by the Environmental Protection Agency prior to dissemination.

7.4 *Laboratory qualifications.* In order to qualify as a testing laboratory for this program, a facility must be so equipped as to be capable of conducting emission tests according to the Federal test procedures as specified in these protocols. In addition, the test facility should have the capabilities required for device installation, vehicle maintenance, and other testing as discussed in previous sections.

APPENDIX A

DRIVEABILITY EVALUATION PROCEDURES

I. *General Provisions.*

A. *Background.* In addition to its ability to reduce emissions, the effect of a retrofit device on vehicle driveability is an important consideration. Since the term driveability encompasses a large number of different characteristics of the way in which a vehicle responds to different actions by the driver, it is necessary to employ a standardized driveability test procedure if comparisons between vehicles with and without retrofit devices and among different retrofit devices are to be meaningful. This appendix presents standard driveability test procedures which are to be used in performing all driveability evaluations required under these protocols.

B. *Definitions of Driveability Terms.* (1) *Road Load.* A fixed throttle position which maintains a constant vehicle speed on a level road.

(2) *Wide Open Throttle (WOT) Acceleration.* An acceleration made entirely at wide open throttle (from any speed).

(3) *Part Throttle (PT) Acceleration.* An acceleration made at any throttle position less than WOT.

(4) *Light Throttle Acceleration.* A part throttle acceleration made at a constant throttle position of approximately one-fourth of full throttle (WOT) opening.

(5) *Detent.* That point in throttle opening immediately preceding the point at which the transmission kickdown function of an automatic transmission is energized. (For manual transmission vehicles, wide open throttle will be used in place of detent position).

(6) *Tip-In.* A maneuver to evaluate vehicle response (up to two seconds in duration) to the initial opening of the throttle.

(7) *Crowd.* An acceleration made at a constant intake vacuum just prior to power enrichment (continually increasing throttle opening).

(8) *Idle Quality.* An evaluation of *vehicle* smoothness with the engine idling, as judged from the driver's seat.

(9) *Backfire.* An explosion in the induction or exhaust system.

(10) *Hesitation.* A temporary lack of initial response in acceleration rate to throttle opening.

(11) *Stumble.* A short, sharp reduction in acceleration rate.

(12) *Stretchiness.* A lack of anticipated response to throttle movement. This may occur on slight throttle movement from road load or during light to moderate accelerations.

(13) *Surge.* A continued condition of short, sharp fluctuations in power. These may be cyclic or random and can occur at any speed and/or load. Surge is usually caused by overlean carburetor mixtures.

(14) *Trace.* Rating of a malfunction that is just discernable to a test driver.

(15) *Moderate.* Rating of a malfunction that is judged to be probably noticeable to the average driver.

(16) *Heavy.* Rating of a malfunction that is pronounced and judged to be obvious to any driver.

II. *Test Procedures.*

A. *General Considerations.* (1) *Types of Testing Required.* Each driveability test consists of two parts, a cold driveability portion and a hot driveability portion. The cold portion of the test evaluates the starting characteristics of the vehicle, idle quality when cold, and driveability during a sequence of acceleration, low speed cruise, and idle modes as the engine warms up. The hot portion of the test evaluates the vehicle's driveability in a fully warmed-up condition during a series of cruise modes of different speeds, during various types of acceleration modes, and during idle. Evaluation of engine shut-down (for dieseling) and hot-restart are also made. The cold start testing is performed after an overnight soak at moderate (60–86 deg. F.) ambient temperature; no evaluation is made of vehicle starting or warm-up characteristics which would be encountered after overnight soak at low ambient temperatures.

(2) *Test Drivers.* A full driveability sequence (cold and hot portions) shall be performed on each vehicle configuration by each of three different test drivers. This is done to minimize the effect on the driveability rating given a vehicle configuration of the different subjective judgments made by different drivers. The same three drivers should be used to evaluate the baseline, retrofitted, and parametrically adjusted (if required) configurations of a given vehicle. The drivers shall not be informed as to what alterations or additions, if any, have been made to the vehicle, and the test driver should be given the opportunity to repeat any particular mode of the test sequence if necessary to confirm his evaluation. If possible, driver and observer teams should be used for the evaluations.

(3) *Test Facilities.* Driveability testing must be performed on a dry, level, smooth-surfaced track or highway. If a highway is used, care should be taken to eliminate any traffic interference, as well as any traffic-induced effects.

(4) *Data Recording.* Data should be recorded during the course of each portion of the driveability test, either by the observer, or by the driver at an appropriate portion of the driving sequence. Recommended formats for the data recording sheets are shown in Figures A–1 through A–4.[1]

B. *Cold Driveability Portion.* (1) Prior to initiating the cold driveability portion of the test, the vehicle shall have been allowed to "soak" without having been operated for a period of at least twelve hours in an area where the ambient temperature is maintained between 60° F. and 86° F.

(2) Record all necessary vehicle and test information as indicated on data sheet 1 (Figure A–1).

(3) Start engine per owner's manual procedure and record start time.

(4) Record engine speed and idle quality in Neutral or Park immediately after start, with foot removed from throttle pedal (fast idle cam).

(5) If engine stalls, repeat steps 3 and 4.

(6) After 5 seconds from start, accelerate engine briefly, and again release throttle; record engine speed, idle quality, and/or number of stalls. If engine stalls, repeat steps 3 through 6.

(7) After 10 seconds from start, apply brakes, shift to normal drive range, and record engine speed, idle quality and stalls. (This step may be omitted for vehicles equipped with manual transmissions.)

(8) After 15 seconds from start, make a light throttle acceleration to 25 mph at a constant throttle opening. (Use manufacturer's recommended shift points for manual transmission.) Cruise at 25 mph for 0.1 mile (to check for choke loading), open throttle to detent and accelerate from 25 to 35 mph at constant throttle in top gear. Decelerate to a stop and accelerate WOT to 35 mph. (For manual transmission vehicles, accelerate WOT from 20 to 35 mph in gear recommended by manufacturer for this speed range.) Decelerate to 10 mph and accelerate 10 to 25 mph at constant light throttle.

(9) Observe and record any malfunctions such as the following:

(a) Hesitations
(b) Stumbles
(c) Surge
(d) Stalls
(e) Backfires

(10) At 0.5 miles from start, brake moderately to a stop. Idle for 30 seconds in drive range (neutral for manual transmission) and record engine speed, intake vacuum, and idle quality.

(11) Repeat steps 8, 9, and 10 through 1.5 miles from start (3 cycles).

(12) Make a light throttle acceleration to 45 mph at constant vacuum (crowd condition to check lean operating with choke off). (For manual transmission vehicles, make constant vacuum acceleration in high gear from lowest speed attainable in that gear to 45 mph.) Decelerate 45 to 25 mph, open throttle to detent and accelerate from 25 to 35 mph at constant throttle in top gear. Decelerate to a stop and accelerate WOT to 35 mph. (For manual transmission vehicles, accelerate WOT from 20 to 35 mph in gear recommended by manufacturer for that speed range.) Decelerate to 10 mph and accelerate 10 to 25 mph at constant light throttle. Repeat steps 9 and 10 above.

(13) Repeat step 12 through 6.4 miles from start (7 cycles).

C. *Hot Driveability Portion.* (1) Warm up vehicle for about 10 miles at 70 mph.

(2) Evaluate curb idle in Neutral and Drive (automatic transmission only) range. Record engine speed, intake vacuum and idle quality.

(3) Cruise at road load from 20 through 70 mph at 10 mph increments, and record stretchiness and surge.

(4) Accelerate WOT from 0 to 30 mph at sudden, moderate and slow throttle opening rates. (For manual transmission, accelerate WOT from 20 to 30 mph in gear recommended by manufacturer for this speed range.) Record hesitation, stumble, and surge.

(5) Accelerate PT from 0 to 30 mph (20 to 30 mph for manual transmission) at constant throttle positions of ¼, ½, and ¾ throttle. Record hesitation, stumble, and surge.

(6) Evaluate part throttle crowds in high gear at constant vacuum from the minimum speed attainable in high gear to 70 mph (or the maximum speed at each vacuum if less than 70 mph). Several runs are to be made at different vacuums to determine the worst surge condition. Also record hesitations and stumbles.

(7) Evaluate "tip-in" characteristics by making several PT accelerations in high gear from 20 to 30 mph. Do not accelerate at a throttle opening which will cause the automatic transmission to downshift. Record hesitations and stumbles.

(8) Accelerate WOT from 0 to 70 mph and record acceleration time. Drive 5 miles at 70 mph and brake moderately to stop. Idle for 30 seconds, shut off engine, and soak for 15 minutes.

(9) After hot soak, restart engine according to manufacturer's hot-start procedure (record start time and number of attempts). Return to idle, and maintain idle for 60 seconds in Neutral (record engine speed, intake vacuum, and idle quality). If engine stalls during the 60 second idle, repeat this hot-start and idle procedure.

III. *Data Analysis & Reporting.* In evaluating the effectiveness of a retrofit device, the *difference* in scores for the vehicle with and without the device is important, rather than the absolute value of either score. Thus, variations in the severity of different drivers' evaluations will be nullified. The final rating assigned to a vehicle configuration will be the average of the three drivers' scores.

Driveability demerits to be used in scoring the results of driveability evaluations are given in the table below:

Demerit summary schedule

Function rated	Demerits				Weighting factor	Weighted demerits			
	T	*M*	*H*	*Yes*		*T*	*M*	*H*	*Yes*
Idle roughness	1	2	4		1	1	2	4	
Hesitation	1	2	4		6	6	12	24	
Stumble	1	2	4		6	6	12	24	
Surge	1	2	4		4	4	8	16	
Stall at start									8
Stall, driving									32
Backfire	1	2	4		6	6	12	24	
Stretchiness	1	2	4		1	1	2	4	
Starting time									(1)

[1] Starting time demerits computed as (seconds−2.0)×0.1.

The purpose of the weighting factor is to assign relative importance to the malfunctions encountered; i.e., a driving stall is more significant to vehicle operational safety than idle roughness. As can be seen, stalls are given only a weighted demerit. When compiling demerits for any maneuver only the most severe malfunction is considered. For example, if during an acceleration a trace hesitation, heavy stumble, and moderate surge were all encountered, the demerits assigned would be based on the heavy stumble. The weighted demerits for the maneuver would be 4×6, or 24 demerits. After each mode of operation has been thus evaluated, a total weighted demerit rating (TWD) can be assigned to a vehicle. Where the driveability test sequence calls for repetition of a given sequence of operating modes, each repetition is scored separately and included in the total rating.

The results of the driveability tests shall be submitted with the final retrofit evaluation report. The results are to be in tabular form showing the total demerits associated with each test configuration and the difference in demerits between the baseline and the parametric and retrofit test configurations. Results are to be reported both for each individual durability test vehicle and for the average of all durability vehicles.

APPENDIX B

CALCULATION OF FUEL CONSUMPTION DATA

Fuel consumption over the 1975 Federal emission test procedure will be calculated for each vehicle emission test performed as part of a retrofit evaluation. Fuel consumption will be calculated from the emission test results using the carbon balance technique which is based on the fact that the total mass of carbon (in the form of unburned hydrocarbons, carbon monoxide, and carbon dioxide) emitted by the vehicle per mile of travel provides a measure of the fuel consumed by the vehicle over that distance.

Fuel consumption will be calculated according to the following equations:

$$\text{mpg} = \frac{\text{grams of carbon/gallon of fuel}}{\text{grams of carbon in exhaust/mile}}$$

$$= \frac{(K_1)\ (\text{grams/gallon})}{(K_1)\ (\text{grams HC/mi}) + (K_2)\ (\text{grams CO/mi}) + (K_3)\ (\text{grams } CO_2\text{/mi})} \qquad \text{(I)}$$

where:

K_1 = carbon weight fraction of gasoline or unburned HC, (mol. wt. C)/(mol. wt. $CH_{1.85}$) = 0.866

K_2 = carbon weight fraction of CO, (mol. wt. C)/(mol. wt. CO) = 0.429

K_3 = carbon weight fraction of CO_2, (mol. wt. C)/(mol. wt. CO_2) = 0.273

grams/gallon = mean density of Indolene 30 test fuel = 2789

grams HC/mi = weighted average gm/mi of HC over the 1975 Federal test procedure as calculated according to 40 CFR 85.-075–26, and similarly for grams CO/mi and grams CO_2/mi

$$\text{fuel consumption} = \frac{1}{\text{mpg}} \qquad \text{(II)}$$

[1] Filed as part of the original document.

In calculating mean fuel consumption figures for purposes of reporting data on retrofit evaluations, it is necessary to average the fuel consumption values calculated according to equation (II), rather than averaging the mpg figures calculated according to equation (I).

APPENDIX C

STATISTICAL PROCEDURES

I. *Determination of Emission Data Fleet Size.* Under these protocols, the applicant will elect to use either a one-stage or a two-stage sampling procedure for determining the size of the emission data fleet. The two-stage procedure requires a separate initial testing program and additional statistical analysis, but may result in a smaller total testing requirement than the one-stage procedure.

A. *One-Stage Sampling Procedure.* If the applicant elects the one-stage sampling procedure, the size of the emission data fleet is automatically set at 113 vehicles. This number has been determined by the Environmental Protection Agency based upon the desired statistical confidence in the mean emission reduction for the emission data fleet and the variability observed in previous device evaluations conducted by the Environmental Protection Agency. The composition of the fleet in terms of models, model years, engine displacements, and transmission types to be included will be specified by the Environmental Protection Agency, considering the applicability of the device specified in the application for evaluation.

B. *Two-Stage Sampling Procedure.* If the applicant elects to employ the two-stage sampling procedure, he will be required to arrange initially for emission data (zero device-mile) testing of a 10 vehicle fleet. The composition of the initial fleet will be specified by the Environmental Protection Agency after review of the application for evaluation.

Based upon the results of such testing, the applicant will be required to report to the Environmental Protection Agency separately for each pollutant (HC, CO, and NOx) the individual vehicle test results, the sample mean percent reduction ($\bar{p}$), and the sample variance (s^2). (See equations (C-2) and (C-3), below.)

$$P_i = \frac{Y_{i1} - Y_{i2}}{Y_{i1}} \times 100\% \qquad \text{(C-1)}$$

where:

P_i = percent reduction (increase) in emissions or fuel consumption for the ith vehicle,
Y_{i1} = baseline emissions in grams/mile or fuel consumption in gallons/mile for the ith vehicle, and
Y_{i2} = emissions in grams/mile or fuel consumption in gallons/mile for the ith vehicle in the retrofitted (or parametrically adjusted) configuration.

$$\bar{p} = \frac{\sum_{i=1}^{n} P_i}{n} \qquad \text{(C-2)}$$

where:

$\bar{p}$ = sample mean percent reduction of the retrofitted (or parametrically adjusted) configuration relative to the baseline configuration, and
n = total number of vehicles in the sample.

$$s^2 = \frac{\sum_{i=1}^{n} (P_i - \bar{p})^2}{n-1} \qquad \text{(C-3)}$$

where:

s^2 = sample variance.

The required size of the second sample (the remainder of the emission data fleet which will be required to be tested) will be determined by the Environmental Protection Agency using the data submitted for the initial fleet. The total size of the emission emission data fleet will be selected to provide assurance that the mean percent reduction of each pollutant can be bracketed within a band of at most plus or minus five percent with 90% confidence. The procedure which will be used to size the second sample is discussed in "Estimation by Double Sampling", by W. R. Cox (Biometrica, 1952, Vol. 39). The sample size is given by:

$$n = \frac{4 s_1^2}{\Delta^2} \left(1 + \frac{2}{N}\right) g_\alpha^2 \qquad \text{(C-4)}$$

where:

n = size of total test sample,
s_1^2 = variance of first sample,
Δ = full width of desired confidence interval,
N = sample size of first sample, and
g_α = the normal deviate exceeded with probability α.

In this case, $N=10$, and $\Delta=0.10$ and $g_\alpha=1.645$ to achieve the desired confidence intervals. Thus, equation (C-4) reduces to:

$$n = 1298.9(s_1^2) \qquad \text{(C-5)}$$

where:

s_1^2 is expressed in decimal fractions and n, the total sample size, is taken to the next higher integer.

Thus, the Environmental Protection Agency will use formula (C-5) and the results of the initial fleet test to determine the total size of the emission data fleet. The total sample size will be the largest of the three values of "n" calculated from equation (C-5) for the three pollutants, but in no case will the total sample size be selected at a value greater than 113 vehicles. The initial fleet of 10 vehicles will be counted as part of the total emission data fleet, and the Environmental Protection Agency will specify the composition of the remainder of the fleet.

II. *Statistical Analysis of Test Results for Reporting.*

A. *Emission Data Fleet.* (1) *Calculation of Mean Percent Reductions.* For each pollutant and for fuel consumption, the mean percent reduction ($\bar{p}$) will be calculated according to equation (C-2). Data from all emission data vehicles tested, including the initial 10 vehicle fleet for the two-stage sampling procedure, will be used.

(2) *Calculations of Confidence intervals.*

For each pollutant and for fuel consumption, the 90% confidence interval around $\bar{p}$ will be calculated as follows:

$$90\% \text{ confidence interval} = \bar{p} \pm (1.645) \frac{s}{\sqrt{n}} \qquad \text{(C-6)}$$

where:

s = the standard deviation, the square root of the variance, and
n = the size of the total emission data fleet.

(3) *Calculation of the Median.* The median is the point on the scale of observations on each side of which there are equal areas under the frequency distribution, the 50th percentile point. Thus, the median is the middle observation if there are an odd number of observations. The median is the mean of the two central observations if there are an even number of cases. For each pollutant and for fuel consumption, the median will be computed.

(4) *Outlier Analysis.* An outlier is defined as any observation which is greater than $\bar{p}+3s$ or less than $\bar{p}-3s$ where $\bar{p}$ is the sample mean percent reduction and s is the sample standard deviation. For each pollutant and for fuel consumption, all outliers will be listed along with an explanation of possible causes.

(5) *Histograms.* For each pollutant and for fuel consumption, a histogram will be calculated. The histogram should contain approximately $\sqrt{n}$ subdivisions where n is the total sample size.

(6) *Ranked List of Observations.* For each pollutant and for fuel consumption, a separate ranked list of test results will be prepared listing all results in order of decreasing percent reduction. These lists will be used by the Environmental Protection Agency to extract any patterns which are present in the data. Each list should present for all three pollutants and fuel consumption the percent reduction, baseline, and retrofitted (or parametrically adjusted) values, and the car number, make, model year, and engine displacement.

(B) *Durability Fleet.* (1) *Graphical Presentation of Data.* Individual plots will be prepared for each vehicle for each pollutant and for fuel consumption showing the observed absolute emission or fuel consumption levels at each mileage test point for the fully retrofitted configuration.

2. *Calculation of Deterioration Factors.* For each pollutant and for fuel consumption, separate linear regression equations will be fitted for each vehicle using a least-squares regression procedure. The model to be used in the regression fit is:

$$e = ax + b \qquad \text{(C-7)}$$

where:

e = emission or fuel consumption level as a function of mileage,
x = mileage, and
a, b = constants determined through least-squares regression.

For each vehicle, a deterioration factor (d_i) will be calculated for each pollutant and for fuel consumption as follows:

$$d = \frac{a_i}{b_i} \qquad \text{(C-8)}$$

where:

d_i = deterioration factor for the ith vehicle for a given pollutant or fuel consumption,
a_i = slope of linear regression equation for the ith vehicle, and
b_i = intercept of the linear regression equation for the ith vehicle.

The mean deterioration factor for each pollutant and for fuel consumption will then be calculated as follows:

$$\bar{d} = \frac{\sum_{i=1}^{10} d_i}{10} \qquad \text{(C-9)}$$

[FR Doc.74-6848 Filed 3-26-74;8:45 am]

MINNESOTA AIR QUALITY IMPLEMENTATION PLAN

Notice of Cancellation of Public Hearing

On February 4, 1974 (39 FR 4503), notice was given that a public hearing under section 110(f) of the Clean Air Act would be held on March 26, 1974, in Duluth, Minnesota, to consider the postponement of the requirements of Regulation APC-5 of the State of Minnesota Implementation Plan to Achieve and Maintain Air Quality Standards as applied to the kraft pulp and paper mill located in International Falls, Minnesota, owned and operated by the Boise Cascade Corporation. Notice of postponement of the public hearing was given on February 28, 1974 (39 FR 7836), rescheduling the public hearing for April 2, 1974, in Duluth, Minnesota.

On March 18, 1974, the Governor of Minnesota withdrew his request that the Environmental Protection Agency postpone for one year the requirements of Regulation APC-5 of the State of Minnesota Implementation Plan, as said regulation applies to the Boise Cascade Corporation kraft pulp and paper mill in International Falls, Minnesota. Notice is hereby given that the public hearing, scheduled to be convened on April 2, 1974, beginning at 9:30 a.m., at the United States District Court, 515 West 1st Street, Duluth, Minnesota, is cancelled.

Dated: March 22, 1974.

ALAN G. KIRK,
Assistant Administrator for Enforcement and General Council.

[FR Doc.74-7241 Filed 3-26-74;10:20 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 19967, 19968; File Nos. BPH-8289, BPH-8375]

KBND, INC., AND JUNIPER BROADCASTING, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of KBND, Inc., Bend, Oregon, requests: 94.1 MHz, #231; 32.5 kW (H&V); 542 feet; Juniper Broadcasting, Inc., Bend, Oregon, requests: 94.1 MHz, #231; 50 kW (H&V); 1,909 feet; for construction permits.

1. The Commission, by the Chief Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications which are mutually exclusive in that they seek the same channel in the same community.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services (1 mV/m or greater in the case of FM) in such areas will be considered under the standard comparitive issue, for the purpose of determining whether a comparative preference should accure to either of the applicants.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are

mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, *it is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

6. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

Adopted: March 15, 1974.

Released: March 19, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WALLACE E. JOHNSON, *Chief, Broadcast Bureau.*

[FR Doc.74-7061 Filed 3-26-74;8:45 am]

NATIONAL INDUSTRY ADVISORY COMMITTEE—AERONAUTICAL COMMUNICATIONS SERVICES SUBCOMMITTEE

Notice of Meeting

Pursuant to the provisions of Public Law 92-463, announcement is made of a public meeting of the Aeronautical Communications Services Subcommittee, National Industry Advisory Committee, to be held Thursday, April 11, 1974. The committee will meet at the FCC (Annex) 1229 20th Street, NW., at 10 a.m. in conference room #205.

Purpose. To consider, prepare and submit recommendations to the Federal Communications Commission concerning a Draft Aeronautical Emergency Communications Systems (AECS) Plan.

Agenda. The Agenda for the meeting is as follows:

Item ----------

1. Proposed new Part 87, Subpart Q—National Defense, of the Federal Communications Commission Rules and Regulations.
2. Final draft of the Basic Aeronautical Emergency Communications Systems Plan.
3. New Business.

It is suggested that those desiring more specific information about the meeting telephone the Emergency Communications Division, FCC (202) 632-7232.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.74-7059 Filed 3-26-74;8:45 am]

[Docket Nos. 19870, 19871; FCC 74R-101]

WINDHAM BROADCASTING GROUP AND NUTMEG BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In re applications of Kenneth N. Dawson and Randall M. Mayer, d/b/a Windham Broadcasting Group, Willimantic, Connecticut, Docket No. 19870, File No. BPH-8177; The Nutmeg Broadcasting Company, Willimantic, Connecticut, Docket No. 19871, File No. BPH-8113; for construction permits.

1. This proceeding involves the mutually exclusive applications of Windham Broadcasting Group (Windham) and The Nutmeg Broadcasting Company (Nutmeg) for a permit to construct and operate a new FM broadcast station on Channel 252A in Willimantic, Connecticut. Nutmeg is presently the licensee of Connecticut standard broadcast Stations WILI, Willimantic; WNTY, Southington; and WINY, Putnam. By Order, 38 FR 34362, published December 13, 1973, the Chief of the Broadcast Bureau, acting pursuant to delegated authority from the Commission, designated the applications for consolidated hearing. Presently before the Review Board is a motion to enlarge issues, filed December 28, 1973, by Windham, seeking addition of Rule 1.65 and 1.615 issues against Nutmeg.[1]

2. Windham alleges that Rule 1.65 and 1.615 issues are required because Nutmeg filed inconsistent, tardy, and erroneous information with the Commission in its application and Ownership Reports. In support of the requested 1.65 issue,[2] Windham avers that Nutmeg's Ownership Report, dated February 7, 1973, and filed February 13, 1973, discloses certain stock transfers that were never reported in Nutmeg's original application or subsequent amendments thereto. Specifically, petitioner alleges that Herbert C. Rice transferred gifts of Class B common stock to various persons on December 31, 1971, February 2, 1972, and February 1, 1973,[3] and that none of these gifts are reflected in the ownership information submitted by Nutmeg in its application filed October 17, 1972, or amendments thereto, filed November 22, 1972, and January 29, 1973. Windham further alleges that Nutmeg's explanation, set forth in its November 22, 1972, amendment, the Edward G. Gerbic *then* owned no stock in Nutmeg, is apparently erroneous since Nutmeg's ensuing amendment, filed January 29, 1973, discloses that Gerbic did not sell his interest in Nutmeg until December 20, 1972. Finally, Windham contends that paragraph 11, section II, page 2 of the November 22, 1972, amendment fails to reflect the retirement of Gerbic's stock. The request for the 1.615 issue[4] is predicated upon Nutmeg's alleged failure to comply with that provision relative to the December 31, 1971, and February 2, 1972, stock transfers. In this regard, Windham maintains that Nutmeg's Ownership Reports were untimely filed since the above sets of gifts of Class B common stock were not reported until the February 13, 1973, Ownership Report.

3. The Broadcast Bureau supports Windham's motion. In addition, the Bureau contends that Nutmeg's failure to properly report the stock ownership in its original application is an apparent violation of Commission Rule 1.514.[5] The Bureau supports a full inquiry into the Gerbic stock discrepancy unless a satisfactory explanation is offered by Nutmeg. Finally, based upon information contained in Nutmeg's "reply" to Windham's motion to enlarge issues,[6] the Bureau suggests that a possible further violation of Rule 1.615 may exist since, as of January 9, 1973, Nutmeg had not filed the required Form 323 reflecting a transfer of 100 shares of Class A stock on December 10, 1973, from Herbert C. Rice to Ethel A. Rice.

4. In response, Nutmeg concedes that its Ownership Reports were tardy, relative to the Class B common stock trans-

[1] Also before the Review Board are the following related pleadings: (a) Broadcast Bureau's comments, filed January 9, 1974; (b) reply [opposition], filed January 11, 1974, by Nutmeg; (c) comments on Broadcast Bureau's comments, filed January 17, 1974, by Nutmeg; and (d) reply, filed January 21, 1974, by Windham.

[2] Rule 1.65 requires disclosure when the information furnished in an application is no longer substantially accurate and complete in all significant respects or when changes which may be of decisional significance have occurred.

[3] Herbert C. Rice is Chairman of the Board and principal stockholder of The Nutmeg Broadcasting Company. Nutmeg's "reply" indicates that his children were the recipients of the Class B common stock gifts.

[4] Rule 1.615 provides in pertinent part, that: "(c) a supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report shall include without limitation * * * (3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock such as: (i) a transfer of stock * * *".

[5] Rule 1.514 provides that: "(a) Each application shall include all information called for by the particular form on which the application is required to be filed * * *."

[6] On January 7, 1974, the Bureau received a copy of Nutmeg's opposition pleading, which is erroneously captioned a "reply". The Commission's copy was received on January 11, 1974.

fers, and that such information was not properly reflected in its original application. Respondent explains, however, that the gifts were part of an estate plan prepared by local attorneys and that the information was inadvertently not transmitted to its Washington counsel.[7] Although the error was discovered in February 1973, respondent continues, and the Ownership Reports updated, Nutmeg alleges that it "forgot" to amend its application to properly reflect this information. Nutmeg declares that it was not its intention to deceive the Commission and that the stock transfers did not involve a shift in control since the Class B common stock is non-voting stock. Respondent further declares that an amendment is being properly filed to cover all Class B and Class A stock transfers to date.[8] Respondent, however, disputes allegations relating to the circumstances surrounding the reporting of the Gerbic stock purchase and the transfer of Class A stock to Ethel Rice. Respondent maintains, with respect to the former, that it submitted the proper information[9] in its January 29, 1973, amendment[10] and, as for the latter, that an FCC Form 323 was filed on December 12, 1973, to reflect this stock gift.[11] Nutmeg requests that the issues not be expanded, arguing that the Commission's rules and regulations are "burdensome for the small station operator", and that the issues should not be clouded with "trivia".

5. In reply, Windham concurs with the Bureau that Nutmeg's failure to submit accurate stock information in its application is an apparent violation of Rule 1.514, and contends that specific reference to that rule is appropriate in its requested issues since its motion articulates clear violations of Rule 1.514. In addition, Windham alleges that there are other discrepancies contained in Nutmeg's responsive pleading, and argues that these additional questions support the requested issues.

6. At the outset, it appears from the pleadings that Nutmeg violated Rule 1.514 by not filing an accurate and complete application with regard to its stock ownership, and Rules 1.615 and 1.65 in not reporting the gift transfers of the Class B common stock in a timely fashion.[12] *Cf. Athens Broadcasting Co., Inc.*, 37 FCC 2d 374, 25 RR 2d 488 (1972); *RKO General, Inc.*, 34 FCC 2d 265, 24 RR 2d 16 (1972). The applicant's reliance upon local attorneys to inform Washington counsel does not absolve it of responsibility to timely report the above information. *Cf. Ultravision Broadcasting Co.*, 11 FCC 2d 394, 407, 12 RR 2d 137, 152 (1968), review denied, FCC 68–1078, October 30, 1968, affirmed *sub nom. WEBR, Inc.* v. *FCC*, 136 U.S. App. D.C. 316, 420 F. 2d 158, 16 RR 2d 2191 (1969); *Milton Broadcasting Company*, 34 FCC 2d 1036, 24 RR 2d 369 (1972); affirmed *sub nom. Mapoles* v. *FCC*, Case No. 72–1583, D.C. Cir., January 31, 1973. In the Board's view, Nutmeg's explanation regarding admitted violations appears to reflect carelessness and inattentiveness in preparing and updating its application and Ownership Reports. Even now, the applicant's amendment (see note 8, *supra*) contains at least two additional discrepancies.[13] Moreover, the question concerning the date when Nutmeg reported that Gerbic sold his stock, and submitted paragraph 11, Section II, page 2 (which fails to reflect the retirement of the stock), cannot be resolved on the basis of the pleadings since there is some indication that the pages reflecting such information may have been misfiled in the Commission's docket file. Accordingly, we believe that an inquiry is necessary to explore the facts and circumstances surrounding Nutmeg's failure to submit a complete and accurate original application, timely Ownership Reports, timely amendment to its application and the various discrepancies mentioned in the pleadings. An appropriate issue will, therefore, be added. However, inasmuch as there appears to have been no intent to mislead or deceive the Commission, and the Class B common stock transfers concerned non-voting stock, were confined within the same family, and were voluntarily reported to the Commission in an Ownership Report filed prior to the motion to enlarge issues, the issue will be added on a comparative basis only. *Cf. Minshall Broadcasting Co., Inc.*, 10 FCC 2d 647, 11 RR 2d 754 (1967); *RKO General, Inc., supra.*

7. *Accordingly, it is ordered,* That the motion to enlarge issues, filed December 28, 1973, by Windham Broadcasting Group is granted to the extent indicated herein, and is denied in all other respects; and the issues in this proceeding are enlarged to include the following issues:

To determine whether The Nutmeg Broadcasting Company complied with the provisions of Sections 1.514, 1.65, and 1.615 of the Commission's Rules with regard to its stock ownership, and, if not, the facts and circumstances surrounding such failure to comply; and to determine, in the light of the evidence adduced pursuant to the foregoing issue, the effect on The Nutmeg Broadcasting Company's comparative qualifications to be a Commission licensee.

8. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the foregoing issues shall be upon Windham Broadcasting Group, and the burden of proof shall be upon The Nutmeg Broadcasting Company.

Adopted: March 18, 1974.

Released: March 20, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74–7060 Filed 3–26–74;8:45 am]

[7] Nutmeg's opposition indicates that its Connecticut standard broadcast stations are represented by Washington communications counsel. In this proceeding, however, Michael C. Rice, president of Nutmeg, is representing the applicant pursuant to § 1.21(d) of the Rules.

[8] A copy of this amendment, including a chart labeled "Chart A" reflecting the dates of the stock transfers, is attached to Nutmeg's pleading. Nutmeg filed the amendment on February 21, 1974, and it was accepted by the Presiding Judge, by Order, FCC 74M–235, released March 6, 1974.

[9] Respondent acknowledges that paragraph 11, Section II, page 2 contains a mistake because of a misunderstanding of the question.

[10] There appears to be some confusion, reflected in the allegations and response, regarding the dates when paragraph 11, Section II, page 2 and the disclosure pertaining to Gerbic's stock transfer were filed and with which amendment they were attached, i.e., the November 22, 1972, amendment or the January 29, 1973, amendment.

[11] Nutmeg filed an unauthorized pleading in response to that portion of the Bureau's comments which had inappropriately raised new matter for the first time. *Cf. Saul M. Miller*, FCC 62R–122, 24 RR 550 (1962). In the light of the facts that the Bureau's pleading raises new matter, that Nutmeg is not represented by legal counsel in this proceeding, and that Nutmeg's responsive pleading would aid in clarifying the issue before us, we will accept this additional pleading. *Cf. Elim Bible Institute, Inc.*, 10 FCC 2d 632, 11 RR 2d 751 (1967); *Southland, Inc.*, 37 FCC 2d 125, 126 n. 7, 25 RR 2d 186, 190 n. 7 (1972). The Board notes, however, "that a party who elects to act without counsel must assume the burden of becoming acquainted with and conforming to the requirements of the Commission's Rules." *Southland, Inc., supra.* See *Silver Beehive Telephone Co.*, 34 FCC 2d 78, 24 RR 2d 238 (1972). With respect to the Bureau's allegation, the Commission's files reflect that Nutmeg did, in fact, file an Ownership Report on December 12, 1973. Accordingly, no further discussion of this allegation is necessary.

[12] With regard to the gift transfers of non-voting stock, the fact that the late filings did not involve a shift in control of the applicant does not mitigate the significance of the violations.

[13] First, Chart A of Nutmeg's February 21, 1974, amendment indicates that Herbert Rice's gift of Class B common stock was transferred on December 29, 1971, while the Ownership Report of February 13, 1973, reveals that the transfer occurred on December 31, 1971; and second, Nutmeg's amendment of January 29, 1973, discloses that Gerbic sold his stock on December 20, 1972, whereas the February 21, 1974, amendment indicates that the stock purchase occurred on December 1, 1972.

FEDERAL POWER COMMISSION

[Doc. No. RP73–112]

ALGONQUIN GAS TRANSMISSION CO.

Extension of Time and Postponement of Prehearing Conference and Hearing

MARCH 21, 1974.

On February 12, 1974, Staff Counsel filed a motion to extend the procedural dates fixed by notice issued November 9, 1973, in the above-designated matter.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Service of Evidence by Staff, September 6, 1974.
Service of Evidence by Interveners, September 27, 1974.
Service of Rebuttal Evidence, October 18, 1974.

Prehearing Conference, October 24, 1974 (10:00 a.m., e.d.t.).
Hearing, October 30, 1974 (10:00 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7085 Filed 3-26-74;8:45 am]

[Docket No. RP71-131]

ALGONQUIN GAS TRANSMISSION CO.

Notice Fixing Hearing

MARCH 21, 1974.

On January 24, 1974, a notice was issued deferring the date of the hearing fixed by order issued November 16, 1973, in the above-designated matter pending further notice.

Notice is hereby given that the hearing will be held on March 26, 1974, at 10 a.m., e.d.t., in a Hearing Room of the Federal Power Commission at 825 N. Capitol Street, NE., Washington, D.C.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7086 Filed 3-26-74;8:45 am]

[Doc. No. RP74-61]

ARKANSAS LOUISIANA GAS CO.

Filing of Substitute Tariff Sheets

MARCH 21, 1974.

Take notice that on March 11, 1974, Arkansas Louisiana Gas Company (Arkla) tendered for filing substitute tariff sheets in Arkla's FPC Gas Tariff, First Revised Volume No. 1. The sheets are designated First Substitute Sheet No. 12B (superseding Original Sheet No. 12B) and First Substitute Sheet No. 12C (superseding Original Sheet No. 12C). Company states that this filing was made in compliance with Ordering Paragraph (I) of the Commission's Order issued February 22, 1974, and that copies of the filing are being sent to each of the five customers served under this FPC Gas Rate Schedule No. G-2.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 5, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7087 Filed 3-26-74;8:45 am]

[Doc. No. RP74-56]

CASCADE NATURAL GAS CORP.

Notice of Extension of Time and Postponement of Hearing

MARCH 21, 1974.

On March 14, 1974, Cascade Natural Gas Corporation (Cascade) filed a motion for a limited extension of the procedural dates fixed by the notice issued February 27, 1974. The motion states that all of the participants including the Staff are agreeable to the extension.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Service of evidence by Cascade, April 12, 1974.
Service of evidence by Staff, May 6, 1974.
Hearing, May 16, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7088 Filed 3-26-74;8:45 am]

[Docket Nos. CP73-340 and CI74-430]

COLORADO INTERSTATE GAS CO. AND COLORADO OIL AND GAS CORP. AND GAS PRODUCING ENTERPRISES, INC.

Order Consolidating Dockets, Granting Motion of Staff for Deferral of Procedural Dates, and Establishing Further Procedures

MARCH 21, 1974.

By application filed on June 23, 1973, as supplemented on November 2, 1973, and amended on January 15, 1974, Colorado Interstate Corporation (CIG), proposes to construct and operate a major extension of its Wyoming Big Horn—Wind River line into the Bearpaw Mountain Area of Montana in order to attach a new gas supply. Included in the proposal are new transmission lines in Montana, additional looping in Wyoming, and a compressor station and dehydration plant near Big Sandy, Montana. CIG claims control over nearly 600,000 acres in the Bearpaw Mountain area throught a single contract with subsidiary companies from which proven and probable reserves are currently estimated to be 139,000 Mcf and 143,000 Mcf respectively. Additional potential reserves in the area are estimated to be 443,000 Mcf.

The Commission order issued November 15, 1973 (38 FR 32172), ____ FPC ____ set this matter for hearing on the direct case of CIG and supporting intervenors scheduled to commence on January 29, 1974. By notice issued January 3, 1974, the secretary postponed the hearing date at the request of CIG until April 16, 1974, and supplied dates for opposing testimony on March 15, 1974 and answering testimony on April 1, 1974. From these latter dates Staff now seeks relief by motion filed March 1, 1974. Staff points out that CIG amended its proposal on January 15, 1974, giving rise to a request for additional information and the need for reevaluation of the environmental impact of the project. Staff furthed noted that the producer application filed by Colorado Oil and Gas Corporation and Gas Producing Enterprises, Inc., in Docket No. CI74-430 may contain issues interrelated to the issues in Docket No. CP73-340. A similar motion seeking consolidation has been filed by Montana Power Company on February 28, 1974. No objections to consolidation have been filed, and we shall grant consolidation as herein ordered.

Although the parties are in general agreement on the matter of consolidation, the procedural dates are generating controversy. CIG's answer to Staff's motion filed March 15, 1974, urges that dates again be set for opposing and answering testimony prior to hearing, and that the hearing be delayed until June 19, 1974.

Public Service Company of Colorado, Western Slope Gas Company and Cheyenne Light, Fuel and Power Company, joint intervenors, by answer filed March 15, 1974, support the CIG proposal. In an answer filed March 1974, in support of Staff's motion, Montana Power Company stated that it has "no opposition to the commencement of the hearing on April 16, 1974, for the purpose of cross-examining the direct case of the pipeline and the producers."

Clearly there may be more than one way to accomplish an orderly and efficient disposition of this matter. For example, direct presentation of CIG and the producer may very well obviate the need for any opposing or answering testimony. This will not be known until the direct case of the applicants is presented and subjected to cross-examination. Moreover, until the availability of a Staff draft environmental impact statement can be established, dates cannot be set for the filing of any environmental presentation which Staff may wish to make. We also reiterate our position that the record in these proceedings must remain open until submission of the Commission Staff's final environmental impact statement. For these reasons we shall direct the hearing to commence as scheduled on April 16, 1974 on the applicants direct cases, leaving the matter of dates for the filing of answering or rebuttal cases to be set by the Presiding Law Judge at such time as he deems appropriate after cross-examination of the applicants' direct case.

The Commission finds:

(1) The issues presented in Docket No. CP73-340 and Docket No. CI74-430 may be interrelated and should be consolidated for hearing and decision.

(2) The motion of Commission Staff for deferral of procedural dates should be granted.

The Commission orders:

(A) The application of Colorado Interstate Gas Company filed in Docket No. CP73-340 and the application of Colorado Oil and Gas Corporation and Gas Producing Enterprises, Inc., filed in Docket No. CI74-430 are hereby consolidated for hearing and decision.

(B) The hearing scheduled to commence on April 16, 1974, at 10:00 a.m. shall commence as scheduled in a hearing room of the Federal Power Commission, 825 N. Capitol Street NE., Washington, D.C. 20426 to consider the direct case of the applicants in the consolidated docket.

(C) Colorado Oil and Gas Corporation and Gas Producing Enterprises, Inc., shall file testimony and exhibits in support of its position on or before April 1, 1974.

(D) The motion of Commission Staff filed March 1, 1974, is hereby granted as modified and conditioned herein.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7089 Filed 3-26-74;8:45 am]

[Docket No. E-8522]

DELMARVA POWER AND LIGHT CO.

Extension of Time and Postponement of Prehearing Conference and Hearing

MARCH 21, 1974.

On March 15, 1974, Staff Counsel filed a motion for an extension of the procedural dates fixed by the Order issued December 28, 1974, in the above designated matter. The motion states that no party had any objection to the motion.

Upon consideration, notice is hereby given that the procedural dates are modified as follows:

Service of Staff's Evidence, April 30, 1974.
Prehearing Conference, May 7, 1974 (10 a.m., e.d.t.).
Service of Intervener's Evidence, May 14, 1974.
Service of Company's Rebuttal Evidence, May 28, 1974.
Hearing, June 18, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7090 Filed 3-26-74;8:45 am]

[Docket Nos. CP73-132, CP73-135, CP73-230, CP74-122, CP74-137, CP73-148]

DISTRIGAS CORPORATION ET AL.

Notice of Further Extension of Time

MARCH 21, 1974.

On March 13, 1974, Distrigas Corporation *et al.*, filed a motion for a further extension of time to file a portion of applicants' direct case as required by notice issued March 8, 1974, in the above-designated matter and delegation of authority to the Presiding Administrative Law Judge to grant any further extension of time as may be deemed appropriate.

Upon consideration, notice is given that the time is extended to and including April 22, 1974, within which applicants shall file and serve the remainder of their case-in-chief. The request to delegate authority to the Presiding Administrative Law Judge to grant any further extension of time is denied.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7091 Filed 3-26-74;8:45 am]

[Project No. 2232]

DUKE POWER CO.

Application for Approval of Revised Exhibits and Permission To Withdraw Project Waters

MARCH 21, 1974.

Public notice is hereby given that application was filed August 20, 1973, for approval of revised exhibits and permission to withdraw project waters by Duke Power Company (Correspondence to: Mr. George W. Ferguson, Jr., Associate General Counsel, Duke Power Company, Legal Department, P.O. Box 2178, Charlotte, North Carolina 28201) for the Catawba Development of its constructed Catawba-Wateree Project No. 2232. The project lands involved are located on Big Allison Creek, Beaver Dam Creek, and Catawba River in York County, South Carolina and Mecklenburg County, North Carolina. The project affects navigable waters of the United States.

Applicant requests Commission approval of revised license Exhibits and for permission to remove from Lake Wylie, within project boundaries, a maximum of 350 cfs to meet needs of the proposed Catawba Nuclear Station for service water, cooling tower blowdown, and makeup water, of which approximately 287 cfs would be returned to the reservoir. The Station would be constructed adjacent to Lake Wylie and would have an installed capacity of 2360 mW.

Pursuant to the National Environmental Policy Act of 1969 and to the Council of Environmental Quality guidelines, particularly section 5(b), the Atomic Energy Commission will be the lead agency for the preparation of an environmental impact statement for any construction associated with the Catawba Nuclear Station, including the subject application.

Any person desiring to be heard or to make protest with reference to said application should on or before May 1, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7003 Filed 3-26-74;8:45 am]

[Doc. No. E-8663]

DUKE POWER CO.

Supplement to Agreement

MARCH 21, 1974.

Take notice that on March 11, 1974 Duke Power Company (Duke) tendered for filing a supplement to its Rate Schedule FPC No. 231, an Electric Power Contract with the City of Abbeville, South Carolina (Abbeville). Duke requests that the Supplement be given an effective date of April 19, 1974.

Duke states that the Supplement provides for an increase in contract demand from 3,000 KW to 5,000 KW made at the request of the customer. Duke also states a copy of this filing has been mailed to Abbeville.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 8, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7002 Filed 3-26-74;8:45 am]

[Docket No. E-8654]

INTERSTATE POWER CO.

Notice of Application

MARCH 21, 1974.

Take notice that on March 8, 1974, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Interstate Power Company (Applicant), seeking an order authorizing the issuance of $17,000,000 principal amount of First Mortgage Bonds, due 2004, 100,000 shares of its authorized but unissued Preferred Stock of the par value of $50 per share, and 365,315 shares of additional Common Stock of the par value of $3.50 per share.

Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

The Bonds proposed to be issued will be in the aggregate principal amount of $17,000,000 and will bear interest at a rate and shall be sold at a price to be determined by competitive bids which the Applicant proposes publicly to invite pursuant to the requirements of § 34.1a (b) of the Commission's regulations under the Federal Power Act. The Bonds will be dated as of May 1, 1974, and will be expressed to mature by May 1, 2004, and will be issued under a Thirteenth Supplemental Indenture to be dated as of May 1, 1974.

Applicant proposes to issue 100,000 shares of its authorized but unissued Preferred Stock of the par value of $50 per share. The dividend rate is proposed to be determined pursuant to competitive bidding on or about May 20, 1974, and to be sold in accordance with the requirements of § 34.1a(b) of the Commission's regulations.

Applicant also proposes to offer for subscription by its common stockholders 365,315 shares of additional Common Stock on the basis of one additional share for each 11 shares held on record. Should there be insufficient shares of Additional Common Stock to fill all Primary subscriptions, those made pursuant to the Primary Subscription Right on the basis of eleven Rights and exact multiples thereof will first be filled, then those made pursuant to the Incidental Right, first on the basis of ten Rights, then nine, and then successively eight, seven and so on in that order. Should it be possible to fill some but not all subscriptions for any one of such groups, subscriptions in the particular group will be filled in the order of their receipt. It is also proposed to issue and sell to underwriters at competitive bidding such of the 365,315 shares of additional Common Stock as shall not be subscribed for pursuant to the Company's proposed subscription offer. The closing date for the issuance of the Common Stock is tentatively fixed for June 14, 1974. The Applicant represents that the price at which the additional Common Stock will be offered to common stockholders for subscription will be determined by the Board of Directors of the Applicant shortly before the proposed offering date such price to be fixed in relation to, and at an appropriate discount from, the then market price of Applicant's presently issued and outstanding Common Stock. Applicant further represents that the compensation of the underwriters for their several commitments to purchase any such unsubscribed stock at such price is proposed to be fixed by competitive bidding to be conducted in accordance with the requirements of § 34.1a(b) of the Commission's regulations. It is presently proposed that sealed, written bids for the purchase of the unsubscribed stock will be opened at 3:45 p.m., New York time, on May 22, 1974, and that an amendment to this application giving the subscription price and the results of such competitive bidding will be filed on May 22, 1974 with this Commission and that a similar amendment will be filed with the Illinois Commerce Commission.

According to the application, the net proceeds to be received by the Applicant from the issuance and sale of the $17,000,000 principal amount of New Bonds, the shares of New Preferred Stock and the shares of Additional Common Stock will be used by the Applicant to discharge a portion of the short-term indebtedness on bank loans made by the Company which were used to pay for a portion of its construction program and towards payment of the $20,832,000 Construction program (excluding pollution control facilities) of the Applicant for 1974 and towards payment of the $49,000,000 Construction program for 1975 and for other corporate purposes. Additional funds will be raised from depreciation accruals, cash on hand and retained earnings.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 12, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7092 Filed 3-26-74;8:45 am]

[Doc. No. E-7488]

IOWA PUBLIC SERVICE CO.

Notice of Application

MARCH 21, 1974.

Take notice that on March 13, 1974, Iowa Public Service Company (Applicant) filed a supplemental application pursuant to section 204 of the Federal Power Act seeking authority to issue $30 million of short-term unsecured promissory notes to commercial banks and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1975 and will bear final maturity dates not later than March 31, 1976.

The application states that the bank notes will bear interest at the prime rate in effect at the lending bank at the date of each borrowing. The commercial paper, having maturities not to exceed 270 days, will be sold directly to commercial paper dealers and will bear interest rates determined by the market conditions at the time of each borrowing. The aggregate amount of commercial paper outstanding at any one time will not exceed 25 percent of the Applicant's gross revenues for the twelve months ending December 31, 1973.

Applicant proposes to use the funds for construction or acquisition of permanent improvements, extensions and additions to Applicant's property and/or to pay off maturing short-term loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7004 Filed 3-26-74;8:45 am]

[Doc. No. CI74-19]

LVO CORP.

Settlement Agreement

MARCH 21, 1974.

The Federal Power Commission hereby issues notice of a settlement agreement submitted in this proceeding by LVO Corporation (LVO) on March 8, 1974. This proceeding involves an increase in rate for gas sold to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), pursuant to LVO's FPC Gas Rate Schedule No. 10. This gas is produced in the Bradshaw Field, Hamilton County, Kansas.

On July 5, 1973, LVO filed an application for abandonment of sale or, alternatively, petition for special relief in this proceeding seeking an increase in its rate to Kansas-Nebraska. Subsequently, on August 10, 1973, LVO executed an amendment to its contract with Kansas-Nebraska providing for a rate of 35.0 cents per Mcf, subject to downward Btu adjustment. After Btu adjustment, the rate is 30.1 cents per Mcf. The amendment also includes a provision for annual escalations of 1.0 cent per Mcf. The amendment was filed with a notice of change in rate with the Commission on September 13, 1973.

Pursuant to Commission order issued January 22, 1974, a prehearing conference was held on March 5, 1974, and continued on March 8, 1974. At the prehearing conference held on March 5, 1974, LVO submitted testimony of three witnesses, two exhibits, and one item by reference in support of its increased rate.

As a result of the prehearing conferences, parties have arrived at a Settlement Agreement which provides that LVO's increased contract rate, designated as Supplement No. 5 to its FPC Gas Rate Schedule No. 10, and its notice of change in rate, designated as Supplement No. 6 to its FPC Gas Rate Schedule No. 10, shall become effective as of the date of the Commission's order approving the settlement. The Settlement Agreement is supported by cost-of-service studies submitted by LVO and by the Commission's Staff.

The Commission Staff has filed a separate statement in support of the Settlement Agreement and Kansas-Nebraska also filed a letter supporting the Settlement Agreement.

Comments on the proposed Settlement Agreement may be filed with the Commission on or before April 3, 1974.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7005 Filed 3-26-74;8:45 am]

[Docket No. E-8395]

MAINE YANKEE ATOMIC POWER CO.

Notice Rescheduling Prehearing Conference

MARCH 21, 1974.

On March 12, 1974, Staff Counsel filed a motion to reschedule the prehearing conference set for March 26, 1974 by notice issued February 7, 1974, in the above-designated matter. The motion states that all parties agree to the rescheduling of the prehearing conference.

Upon consideration, notice is hereby given that the prehearing conference will be held on April 8, 1974, at 10 a.m., e.d.t., preceding the hearing scheduled for that day.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7093 Filed 3-26-74;8:45 am]

[Doc. Nos. IT-6078 and E-6640]

NIAGARA MOHAWK POWER CORP.

Notice of Applications

MARCH 20, 1974.

Take notice that Niagara Mohawk Power Corporation (Applicant), incorporated under the laws of the State of New York with its principal place of business at Syracuse, New York, filed applications with the Federal Power Commission in Docket Nos. IT-6078 and E-6640 on February 25, 1974 for supplemental orders, pursuant to section 202(e) of the Federal Power Act, authorizing increases in the amounts and rates of transmission of electric energy which Applicant may transmit from the United States to Canada.

By the Commission order issued March 28, 1969 in Docket No. IT-6078 (41 FPC 436), Applicant was authorized to transmit electric energy from the United States to Canada in an amount not to exceed 1,750,000 Kwh per year at a rate of transmission not to exceed 500 Kw for sale and delivery to Hydro-Quebec Electric Commission (Hydro-Quebec) over certain 4.8 Kv facilities of Applicant located at the international border between the United States and Canada near the Hamlet of Hogansburg, Franklin County, New York and within the boundaries of the St. Regis Indian Reservation. Applicant's facilities are covered by its Presidential Permit signed by the President of the United States on January 31, 1948, as amended, Docket No. IT-6079.

By Commission order issued March 28, 1969 in Docket No. E-6640 (41 FPC 438), Applicant was authorized to transmit electric energy from the United States to Canada in an amount not in excess of 750,000 Kwh per year at a rate of transmission not to exceed 200 Kw for sale and delivery to Hydro-Quebec over certain 4.8 Kv facilities of Applicant located at the international border between the United States and Canada in the vicinity of the Hamlet of Chapman, Town of Fort Covington, Franklin County, New York. Applicant's facilities are covered by its Permit signed by the Chairman of the Commission on January 24, 1956, Docket No. E-6640.

Applicant now requests that the authorizations granted by Commission orders of March 28, 1969, referred to above, be modified so as to authorize Applicant to export electric energy to Hydro-Quebec (1) in an amount not in excess of 3,000,000 Kwh per year at a rate of transmission not to exceed 800 Kw in Docket No. IT-6078, and (2) in an amount not in excess of 2,000,000 Kwh per year at a rate of transmission not to exceed 500 Kw in Docket No. E-6640, all for the purpose of meeting the growth in the electric service requirements of consumers served by Hydro-Quebec in the St. Regis Indian Reservation in the Province of Quebec, Canada. No change in Applicant's electric transmission facilities at the United States-Canadian border will be made by reason of the proposed increases in the amounts and transmission rates of the exported energy. That energy will be sold and delivered by Applicant to Hydro-Quebec in accordance with the terms and conditions and at the rates and charges set forth and included in the rate schedules which Applicant submitted as exhibits to its applications.

The amounts of electric energy which Applicant proposes to export to Hydro-Quebec will include energy purchased by Applicant from other electric utilities as well as energy generated by Applicant. According to the applications, such amounts are "relatively insignificant" when considered in the light of Applicant's total electric supply resources comprised of Applicant's own generation and purchases from other systems including Canadian Systems.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 5, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The applications are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7006 Filed 3-26-74;8:45 am]

[Doc. No. E-8578]

PUBLIC SERVICE COMPANY OF OKLAHOMA

Filing of Extension Agreement

MARCH 21, 1974.

Take notice that on March 6, 1974, Public Service Company of Oklahoma (Company) tendered for filing a Letter Agreement, dated February 25, 1974, extending the date of termination in Supplement No. 9 to Rate Schedule FPC No. 180 with the Associated Electric Cooperative, Inc.

According to Company, on February 22, 1974, Company was informed that Associated Electric Cooperative, Inc. wishes to extend the termination date of the agreement from February 28, 1974, to May 31, 1974. Company states that the terms and conditions of the three month extension are to remain the same as those contained in the original Letter Agreement dated January 31, 1973. Company requests waiver of the 30 day filing requirement of § 35.11 and an effective date for this agreement of March 1, 1974.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 5, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7004 Filed 3-26-74;8:45 am]

[Docket No. E-8660]

RUMFORD FALLS POWER CO.

Notice of Change in Rate Schedule

MARCH 21, 1974.

Take notice that on February 12, 1974 Rumford Falls Power Company (Rumford Falls) tendered for filing a change in rate schedule. Rumford Falls states that the change is from 3.51 mills per KWH to 6.95 miles per KWH on weekday purchases and from 3.12 mills per KWH to 5.33 mills per KWH on weekend purchases of surplus hydroelectric power by Central Maine Power Company.

Rumford Falls proposes an effective date of February 1, 1974 for said change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 5, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 74-7094 Filed 3-26-74;8:45 am]

[Project No. 719]

JESSIE I. SMITH

Application for New License for Constructed Project

MARCH 21, 1974.

Public notice is hereby given that application for new minor license was filed on June 30, 1972, and supplemented on December 26, 1972, under the Federal Power Act (16 U.S.C. 791a–825r) by Jessie I. Smith (Correspondence to: Jessie I. Smith, 12730 Lake City Way, Seattle, Washington 98125) for constructed Trinity Project No. 719, located on James and Phelps Creeks in Chelan County, Washington, in the Wenatchee National Forest.

The original license for Project No. 719 expired on November 1, 1972, and the project is currently under annual license. The installed capacity of the project is 240 kw.

The existing Trinity Project consists of: (1) A small diversion dam located on James Creek; (2) a 3,350-foot long spiral steel penstock extending along James Creek and across the Chiwawa River; (3) a diversion dam located on Phelps Creek; (4) a 9,450-foot long flume and penstock; (5) a powerhouse containing a 390 horsepower turbine connected to a 240 kw generator; and (6) appurtenant facilities.

The project power is used for general domestic purposes, serving three houses, two cabins, the powerhouse, a machine shop, and other buildings located on patented lands of the Applicant.

Any person desiring to be heard or to make protest with reference to said application should on or before May 17, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7095 Filed 3-26-74;8:45 am]

[Project No. 1002]

SOUTHERN CALIFORNIA EDISON CO.

Application for Surrender of Transmission Line License

MARCH 21, 1974.

Public notice is hereby given that application was filed September 10, 1973, under the Federal Power Act (16 U.S.C. 791a–825r) by Southern California Edison Company (Correspondence to: Mr. P. B. Peecock, Manager, Right of Way and Land Dept., Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, California 91770) for surrender of its Transmission Line License Project No. 1002 located in Los Angeles County, California, and affecting lands of the United States within Angeles National Forest.

Project No. 1002 consists of a woodpole 4 KV transmission line extending 4.85 miles from a point in the SE¼NE¼, Sec. 36, T. 3N., R. 15W., to a point in the SE¼NW¼, Sec. 28, T. 3N., R. 14W., S.B.B. & M., California, with several branches.

Applicant requests termination of its minor part license for the reason that the transmission line is presently operated under a special use permit dated July 25, 1972, issued by the Angeles National Forest for the Kagel Canyon Distribution Area. Earlier, on June 22, 1970, the U.S. Forest Service granted Applicant permission to operate and maintain the aforementioned transmission line under the authority of the Kagel Canyon Distribution Area Permit and requested Applicant to file an application for surrender of license in order to accommodate a land exchange.

Any person desiring to be heard or to make protest with reference to said application should on or before May 3, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7096 Filed 3-26-74;8:45 am]

[Project No. 2739]

CITY OF VANCEBURG, KENTUCKY AND VANCEBURG LIGHT, HEAT AND POWER SYSTEM

Application for Approval of a Preliminary Permit for Unconstructed Project

MARCH 21, 1974.

Public notice is hereby given that application for preliminary permit has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by City of Vanceburg, Kentucky and Vanceburg Light, Heat and Power System (Correspondence to: Philip P. Ardery, Brown, Todd & Heyburn, Sixteenth Floor, Citizens Plaza, Louisville, Kentucky 40202) for proposed Project No. 2739, known as the Meldahl Project, which is located on the Ohio River on the Kentucky side of the Captain Anthony Meldahl Locks and Dam in the Commonwealth of Kentucky, County of Bracken some 436.2 river miles below Pittsburgh, Pennsylvania, and approximately 1.7 river miles downstream from the town of Chilo, Ohio. The proposed project would also be located near the towns of Maysville and Newport, Kentucky, and New Richmond, Ripley, and Cincinnati, Ohio.

The proposed run of the river project would affect approximately 81.4 acres of U.S. land which are under the supervision of the U.S. Corps of Engineers and would utilize water from a government dam. The hydroelectric facilities for this project would consist of a powerhouse containing low-head generating units with a proposed capacity of 70,000 kw.

Vanceburg plans to use the power generated at the project to meet its load requirements and to sell any excess energy to East Kentucky Rural Electric Cooperative Corporation. Vanceburg, through its transmission facilities, plans to be interconnected with the East Kentucky System.

Any person desiring to be heard or to make protest with reference to said application should on or before June 4, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-7001 Filed 3-26-74;8:45 am]

FEDERAL RESERVE SYSTEM

ADAIR CORP.

Order Denying Formation of Bank Holding Company

The Adair Corporation, Adair, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through the acquisition of 97 percent of the voting shares of Exchange State Bank ("Bank"), Adair, Iowa.

At the same time, Applicant has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y to continue to engage in insurance agency activities in a community with a population of less than 5,000 persons.

Notice of the applications, affording opportunity for interested persons to submit comments and views, was published on December 17, 1973 (38 FR 35352, 35353) and the time for filing comments and views has expired. The Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act, and the considerations specified in section 4(c)(8) of the Act.

Applicant presently conducts general insurance agency activities in Adair, Iowa, a town of approximately 750 people. Bank has deposits of $6.6 million,[1] and is the smallest of 7 banks in the relevant banking market,[2] controlling 7.4 per cent of the total deposits in commercial banks in the market. The purpose of the proposed transaction is to effect a transfer of the ownership of Bank from individuals to a corporation owned by the same individuals with no change in Bank's management or operations. The principals of Applicant also own shares in several other bank holding companies and banks, including the Anita State Bank, Anita, Iowa ("Anita Bank"), which is located 7 miles from Bank and is Bank's nearest competitor. Anita Bank is the third largest bank in the market controlling about 10 per cent of deposits therein. Consummation of the proposal would have adverse effects on existing and potential competition, to the extent that it would facilitate maintenance of the existing ties between these two banks.

As it has indicated on previous occasions, the Board believes that a holding company should be a source of financial strength for its subsidiary bank(s) and every proposed acquisition or formation is closely examined with this consideration in mind. The future prospects of Applicant are primarily dependent upon the financial resources of Bank. Bank's capital to total assets ratio has declined significantly under current management of Bank. Despite Bank's need for additional capital, principals of Bank, who are also the owners of Applicant, have derived large management fees and cash dividends from Bank. The Iowa State Banking Department, in order to safeguard Bank's resources, has required that any future dividends must first be authorized by it. Obviously, any such limitation on Bank's dividends could impair Applicant's ability to service the debt it would assume incident to the proposed transaction.

The Board has considered Bank's present condition and declining capital position under current ownership. The past policies of principals of Applicant regarding the withdrawal from Bank of large management fees, makes it likely that Applicant would not have the necessary financial flexibility to meet its annual debt servicing requirements without adversely affecting the capital position of Bank. The above factors strongly suggest that the future financial requirements of Applicant could place an undue strain on Bank and thus impair Bank's ability to be a viable banking organization in meeting the banking needs of the communities which it serves. Such considerations lend weight toward denial of the application.

The Board notes that principals of Applicant already control or have significant interests in several other banks. The principals have received large management and directors' fees and liberal dividends from some of these other banks, resulting in the declining capital condition of such banks. These precedents lend support to the view that the capital position of Bank could be adversely affected upon approval of this proposal.

Under the above circumstances and on the basis of other facts of record, considerations relating to the financial condition, managerial policies and future prospects of Applicant and Bank lend weight for denial of the application. The Board does not sanction the use of a holding company structure to perpetuate management practices that will in due course impair the financial condition of the bank to be acquired. Such action would not be consistent with the standards of section 3(c) of the Act nor would it serve the public interest.

On the basis of all the facts in the record, it is the Board's judgment that the financial condition of Bank and management practices of principals of Applicant would be inconsistent with the standards set forth in Section 3(c) of the Act. Accordingly, the Board concludes that consummation of the proposal would not be in the public interest, and that the application should be denied.[3]

By order of the Board of Governors,[4] effective MARCH 20, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7011 Filed 3-26-74;8:45 am]

[1] Banking data are as of June 30, 1973.

[2] The market area is approximated by the upper half of Cass County and portions of Audubon, Adair and Guthrie counties.

[3] Denial of Applicant's § 3(a)(1) application renders moot Board action on the accompanying § 4(c)(8) application.

[4] Voting for this action: Chairman Burns and Governors Mitchell, Sheehan, Bucher and Holland. Absent and not voting: Governors Brimmer and Wallich.

BYERS STATE BANKSHARES, INC.

Order Approving Formation of Bank Holding Company and Acquisition of Certain Assets of a General Insurance Agency

Byers State Bankshares, Inc., Byers, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) for the formation of a bank holding company through acquisition of 80 percent or more of the voting shares of Byers State Bank ("Bank"), Byers, Colorado.

At the same time, Applicant has applied for the Board's approval under Section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and Section 225.4(b)(2) of the Board's Regulation Y to engage in the sale of life insurance in a community of less than 5,000 persons.

Notices of the applications, affording an opportunity for interested persons to submit comments and views, were published on January 23 and 24, 1974 (39 Federal Register 2645, 2806) and the time for filing comments and views has expired. The Board has considered the applications and all comments received in light of the factors set forth in Section 3(c), and the considerations specified in Section 4(c)(8) of the Act.

Applicant is a nonoperating corporation formed for the express purpose of becoming a bank holding company through the acquisition of Bank, and engaging in the sale of life insurance. Bank (deposits of $3.9 million)[1] is the only bank in Byers, a community of approximately 600 persons, and ranks 66th among 68 banks in the Denver banking market,[2] in which it controls 0.1 percent of total market deposits. Since the transaction involves only a change from individual to corporate ownership, consummation of the proposal will have no adverse effects on existing or potential competition.

The future prospects of Applicant are primarily dependent upon the financial resources of Bank. Applicant proposes to service the debt it assumes incident to this proposal over a 10-year period through dividends from Bank of not more than 50 percent of Bank's net income and life insurance agency revenue. In light of Bank's past earnings and anticipated growth, the projected earnings of Bank appear to provide Applicant with the necessary financial flexibility to meet its annual debt servicing requirements and maintain an adequate capital position for Bank. Therefore, considerations relating to the banking factors are consistent with approval of the application.

Although there is no evidence in the record to indicate that the banking needs of the residents of the Byers area are not currently being met, considerations relating to the convenience and needs of the community to be served are consistent with approval. It is the Board's judgment, therefore, that the proposed

[1] All banking data are as of June 30, 1973.

[2] The Denver banking market is approximated by Adams, Arapahoe, Denver, Jefferson Counties and the Broomfield area of Boulder County.

transaction would be in the public interest and that the application to acquire Bank should be approved.

Applicant proposes to acquire the life insurance portion of the general insurance agency presently being operated by Bank. Thereafter, Applicant would conduct the life insurance activities directly, and Bank would continue to operate the remaining insurance agency activities. The operation of general insurance agency activities by a bank holding company in a community with a population not exceeding 5,000 is an activity previously determined by the Board to be so closely related to banking as to be a proper incident thereto (12 CFR § 225.4 (a)(9)(iii)(a)); and the sale of life insurance is an activity included in the operation of a general insurance agency. Consummation of this proposal would permit Applicant to continue to offer Byers residents the convenience of obtaining banking and insurance services in conjunction with each other. There is no evidence in the record to indicate that approval of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest or unsound banking practices.

Based on the foregoing and other considerations reflected in the record, the Board has determined that the considerations affecting the competitive factors under section 3(c) of the Act and the balance of the public interest factors the Board must consider under section 4(c)(8) are consistent with approval of the Applicant's proposal.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order; nor shall the acquisition of Bank, or the acquisition of Bank's life insurance activities be made later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority. The determination of the permissibility of the insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[2] effective MARCH 20, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7012; Filed 3-26-74;8:45 am]

[2] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, Holland and Wallich. Absent and not voting: Chairman Burns.

CHEMICAL FINANCIAL CORP.

Formation of Bank Holding Company and Proposed Acquisition of Chemical Financial Corporation

Chemical Financial Corporation, Midland, Michigan, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares of Chemical Bank and Trust Company, Midland, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Chemical Financial Corporation has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y for permission to acquire voting shares of Westley's Data Processing Inc., Midland, Michigan. Notice of the application was published on February 13, 1974, in Midland Daily News, a newspaper circulated in Midland, Michigan.

Applicant states that the proposed subsidiary would engage in the activities of providing bookkeeping and data processing services for the internal operations of the proposed holding company and any future subsidiaries; storing and processing other banking financial or related economic data primarily for banks, savings and loan associations, credit unions, mortgage companies, municipalities and other bank customers including bookkeeping and billing; payroll accounting; process punch card accounting; account billing; accounts receivable; accounts payable; general ledger; write-up work; payroll; inventory accounting; tax and utility bill processing; demand deposits; savings, installment loans, mortgage loans, time deposits, certificates of deposit and trust accounting; and making excess computer time available to customers; furnishing byproducts of developments of programs; and furnishing services upon request of customers. Applicant states that such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 17, 1974.

Board of Governors of the Federal Reserve System, March 20, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7014 Filed 3-26-74;8:45 am]

FIRST JERSEY NATIONAL CORP.

Amended Order

By Order dated April 30, 1973, the Board approved an application of First Jersey National Corporation, Jersey City, New Jersey, to acquire the assets of Atlantic City Loan Company ("ACL"), Atlantic City, New Jersey (38 FR 12168, May 9, 1973). Applicant's proposal contemplated that the transaction was to be effected through Applicant's wholly-owned subsidiary, Guardian Commercial Corporation ("GCC"), a company which had been acquired by Applicant on June 30, 1970, and under the provisions of section 4(a)(2) of the Bank Holding Company Act could not be retained beyond December 31, 1980, without Board approval. However, in approving the application, the Board's Order stated that "the application is hereby approved on the condition that Applicant maintain the assets of ACL separate and apart from those of GCC and operate ACL as a separate business entity." In view of such condition, Applicant effected the acquisition through a newly formed subsidiary of the holding company, Guardian Loan Company of Atlantic City ("Guardian Loan Company").

Applicant requests to be relieved from the condition in the Board's Order so that the assets of Guardian Loan Company may be transferred to GCC for the purpose of effecting a sale of GCC no later than May 15, 1974.

On the basis of Applicant's commitment to sell GCC no later than May 15, 1974, the Board has concluded that the request should be granted. Accordingly, the Board's Order of April 30, 1973, is hereby amended by deleting the requirement that "Applicant maintain the assets of ACL separate and apart from those of GCC and operate ACL as a separate business entity."

By order of the Board of Governors,[1] effective March 20, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7013 Filed 3-26-74;8:45 am]

[1] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher, Holland, and Wallich. Absent and not voting: Chairman Burns.

McNEE, INC.

Formation of Bank Holding Company and Proposed Acquisition of McNee Insurance Agency

McNee, Inc., Grainfield, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 81 percent or more of the voting shares of The Citizens State Bank, Grainfield, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

McNee, Inc., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y for permission to acquire voting shares of McNee Insurance Agency, Grainfield, Kansas. Notice of the application was published on February 8, 1974, in The Grainfield Cap Sheaf, a newspaper circulated in Gove County, Kansas.

Applicant states that the proposed subsidiary would engage in the activities of the sales of fire, casualty, crop hail, credit life, credit accident and health, and liability insurance. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at Federal Reserve Bank of Kansas City. City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 17, 1974.

Board of Governors of the Federal Reserve System, MARCH 20, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-7015 Filed 3-26-74;8:45 am]

GENERAL ACCOUNTING OFFICE

U.S. GOVERNMENT BILL OF LADING AND U.S. GOVERNMENT TRANSIT BILL OF LADING (GBL)

Notice of Revision

The General Accounting Office has revised effective April 1, 1974, the U.S. Government Bill of Lading, SF 1103; the U.S. Government Transit Bill of Lading, SF 1131; the continuation sheet, SF 1109, and related forms making up snapout sets thereof, to incorporate the recommendations of the Joint Agency Transportation Study. Attachments I and II[1] show specimen copies of the SF 1103 and SF1131. These revised forms and regulations are for the procurement of and billing and payment for freight transportation services furnished for account of the United States. Joint regulations of the Comptroller General and the Secretary of the Treasury prescribing standards for the payment of charges therefor are codified in 4 CFR Part 56.

After April 1, 1974, the current standard, transit, and short form GBLs shall not be issued by shippers who have received their stocks of the revised standard and transit GBLs. The new forms may be available in March 1974, but some shippers may not receive stocks of the new forms until after April 1, 1974. A period of transition may be required to process current forms of the standard and transit GBL that are not accomplished before the transition date. Thus, current forms of the SF 1103 and SF 1131 issued before but not accomplished until after April 1, 1974 (or used after that date because of nonreceipt of the revised forms), shall be certified by the consignees under procedures applicable to those forms. The following forms are abolished and will not be used after April 1, 1974, unless required in connection with current GBLs.

SF 1107	Temporary Receipt in Lieu of U.S. Government Bill of Lading
SF 1108	Certificate of Lieu of Lost U.S. Government Bill of Lading
SF 1108a	Certificate in Lieu of Lost U.S. Government Bill of Lading (memorandum copy)
SF 1196	Short Form—U.S. Government Bill of Lading
SF 1197	Certified True Copy of Lost Short Form—U.S. Government Bill of Lading

Stocks of the superseded or cancelled forms shall be disposed of by burning or shredding and the serial numbers thereof reported through channels to the General Services Administration.

In implementing procedures for handling the new forms, the following is authorized or required:

Mandatory surrender of the original of the GBL to the origin carrier, or its agent, at time shipment is tendered, thus making the carrier responsible for safeguarding the document and for its delivery to the last line-haul carrier authorized to bill the related charges.

Forwarding of a Consignee's Copy, SF 1103b/SF 1131b, to be sent to the consignee immediately upon tender of the consignment to the origin carrier. That copy includes on the reverse instructions to the consignee (attachment IV) as to action to be taken upon receipt of the shipment, including loss and damage. Agencies shall design internal forms necessary for the reporting of loss and damage by consignees, if such forms are not already available.

Certification by the authorized billing carrier rather than the consignee as to delivery of the consignment.

Elimination of the requirement in 4 CFR 52.19; in A-24222 dated June 20, 1968, to the Assistant Secretary of Defense, Comptroller; and in circular letter T-OD-G-83 dated November 8, 1971, for furnishing delivery receipts to support billings for international airline shipments, for shipments of unaccompanied baggage via freight, and for shipments originating in continental United States and moving overseas on through Government bills of lading. However, on these types of shipments, a carrier other than the last line-haul carrier authorized to bill (in privity with the contract of carriage as specified in 4 CFR 52.38) may bill the charges on its own certification of delivery, provided it has submitted to the paying office a blanket "Certificate of Billing Carrier in Lieu of Waiver from Delivering Carrier" in the general format specified in 4 CFR 52.20.

Incorporation of the conditions (attachment V) on the reverse of the current GBL into the Code of Federal Regulations (see 4 CFR 52.51).

Use of the Carrier's Waybill (Original), SF 1105/SF 1133, as the substitute form for lost original GBL (SF 1103/SF 1131). These must be properly certified on the reverse (1) by the issuing officer as to the request for the services and (2) by the billing carrier as to delivery of the consignment. Upon receipt of the SF 1105/SF 1133 from the carrier and after determining that the services were ordered, the issuing office shall place the following certification on the reverse thereof:

"I certify that the services shown on this Freight Waybill were requested.

(Signature of issuing officer) (Date)"

The issuing office will then return the SF 1105/SF 1133 to the carrier which must place on the reverse thereof an endorsement identical to the "Certificate of Carrier Billing for Charges" appearing on the original GBL to indicate the condition of the shipment upon receipt at destination.

In the event the Carrier's Waybill (Original), SF 1105/SF 1133, is also lost, the carrier should request and be furnished a certified true copy of the issuing office's memorandum copy, SF 1103a/SF 1131a, certified as specified above, for use as the substitute document.

Detailed instructions on the preparation and processing of the new forms are incorporated into a handbook published by General Services Administration (and available from the Government Printing Office) and into regulations issued by

[1] Filed as part of the original document.

the Military Traffic Management and Terminal Service, Department of the Army, for use of the military establishments and components. Pending complete revision of Part 52, Title 4, of the Code of Federal Regulations, §§ 52.3, 52.6, 52.7, 52.8, 52.9, 52.10, 52.11, 52.21, 52.22, 52.23, 52.24, 52.25, 52.26, 52.27 and 52.28, and those portions of §§ 52.18 and 52.19 that are inconsistent with the new procedures outlined above will no longer be complied with.

[SEAL] ELMER B. STAATS,
Comptroller General of the United States.

[FR Doc.74-7075 Filed 3-26-74;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SPECIAL PROJECTS ADVISORY PANEL

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Special Projects Advisory Panel to the National Council on the Arts will be held at 1:00 p.m. on March 30, and at 9:00 a.m. on March 31, 1974 in the first floor conference room of the Shoreham Building, 806 15th Street, NW., Washington, D.C.

A portion of this meeting will be open to the public on March 30 from 1:00 p.m. to 5:00 p.m. and on March 31 from 9:00 a.m. until 12:00 noon on a space available basis. Accommodations are limited. During the open session, policy and guidelines for reorganized Special Projects Program will be discussed.

The remaining sessions of this meeting, March 30 from 1:00 p.m. to 5:00 p.m., and March 31 from 9:00 a.m. to 5:00 p.m. are for purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, these session, involving matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4) and (6), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Luna Diamond, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 382-5871.

ED WOLFE,
Administrative Officer National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc.74-6996 Filed 3-26-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

REQUEST FOR CLEARANCE OF REPORTS

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on March 22, 1974 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529).

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, Evaluation of Fixed Exam Centers Alternative to Mobile Examination Centers, Form ____, Single time, HRD/Caywood, Individuals.

REVISIONS

None

EXTENSIONS

AGENCY FOR INTERNATIONAL DEVELOPMENT

Application for Approval of Commodity, Form AID 11, Occasional, Evinger (x), Business firms.

VETERANS' ADMINISTRATION

Report of Medical Examination for Disability Examination Form 21-2545, Occasional, Evinger (x), Physicians.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.74-7213 Filed 3-26-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-4575]

BRANIFF INTERNATIONAL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the Matter of Application of the Boston Stock Exchange For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Braniff International Corporation.

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.74-7043 Filed 3-26-74;8:45 am]

[File No. 7-4577]

BRANIFF INTERNATIONAL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the Matter of Application of the Midwest Stock Exchange, Inc. For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Braniff International Corporation.

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission

on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7047 Filed 3-26-74;8:45 am]

[File No. 7-4578]

BRANIFF INTERNATIONAL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the Matter of Application of the PBW Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Braniff International Corporation.

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7048 Filed 3-26-74;8:45 am]

[File No. 7-4581]

CINCINNATI MILACRON INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the matter of application of the Boston Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Cincinnati Milacron Inc.

Upon receipt of a request, on or before April 4, 1974, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7044 Filed 3-26-74;8:45 am]

GTI CORP.

Order Granting Request for Withdrawal of Application

MARCH 19, 1974.

The PBW Stock Exchange Inc., pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, having made application to the Commission for unlisted trading privileges in the above named stock; and

The application having requested under date of February 21, 1974 that its application be withdrawn;

It is ordered, That the request of the applicant be granted and that the applicant be permitted to withdraw said application without prejudice to possible future action.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7051 Filed 3-21-74;8:45 am]

[70-5436]

METROPOLITAN EDISON CO.

Notice of Proposed Charter Amendment To Increase Authorized Shares of Company's Cumulative Preferred Stock and Proxy Solicitation in Connection Therewith

MARCH 19, 1974.

Notice is hereby given that Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County Pennsylvania 19605 ("Met-Ed"), a wholly-owned electric utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Met-Ed proposes to amend its corporate charter in order to increase the number of shares of cumulative preferred stock, par value $100 per share, which it is authorized to issue from its present authorization of 1,400,000 shares (of which 1,393,912 shares are now outstanding) to 2,150,000 shares. It is stated that the increase in the number of shares is being sought in order that Met-Ed will be in a position to issue and sell, from time to time, additional shares of cumulative preferred stock if such issuance and sale are deemed necessary or desirable in order to facilitate the financing of its construction program. It is Met-Ed's present intention to meet its capital requirements by the issuance of additional funded debt and with funds generated from operations. However, by reason of the first mortgage bond and debenture indenture constraint's upon the ability of Met-Ed to issue additional funded debt and the enormous capital requirements of its substantial construction program, (estimated to be $1,400,000 in 1974), it may become necessary for Met-Ed to issue additional shares of Cumulative Preferred Stock to enable it to continue with its construction program.

The proposed increase in the authorized Cumulative Preferred Stock of Met-Ed will require the consent of the holders of a majority of the total number of shares of Preferred Stock of all series outstanding. Met-Ed plans to seek such consent at a Special Meeting of Holders of Met-Ed's Preferred and Common Stock and to solicit proxies for the granting of such consent.

The fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 15, 1974, request in writing that a hearing be held with respect to the proposed matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be

served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective pursuant to Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7052 Filed 3-26-74;8:45 am]

[File No. 500-1]

NATIONAL ALFALFA DEHYDRATING AND MILLING CO.

Notice Amending Notice of Suspension of Trading

MARCH 19, 1974.

The Commission having determined to amend its notice of March 15, 1974 summarily suspending trading in the securities of National Alfalfa Dehydrating and Milling Company for the period from March 17, 1974 through March 26, 1974;

Therefore, pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in the common stock, and all other securities of National Alfalfa Dehydrating and Milling Company being traded on the American Stock Exchange and all other securities of National Alfalfa Dehydrating and Milling Company being traded otherwise that on a national securities exchange is suspended, for the period from March 17, 1974 through March 26, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7050 Filed 3-26-74;8:45 am]

[File No. 7-4576]

THIOKOL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the matter of application of the Boston Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Thiokol Corporation (Virginia).

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7045 Filed 3-26-74;8:45 am]

[File No. 7-4579]

THIOKOL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the Matter of Application of the Midwest Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Thiokol Corporation (Virginia).

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7046 Filed 3-26-74;8:45 am]

[File No. 7-4580]

THIOKOL CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MARCH 19, 1974.

In the matter of application of the PBW Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Thiokol Corporation (Virginia).

Upon receipt of a request, on or before April 4, 1974 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.74-7049 Filed 3-26-74;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30-Region IV; Rev. 1]

ASSISTANT REGIONAL DIRECTOR FOR FINANCE AND INVESTMENT, ET AL.

Delegation of Authority To Conduct Program Activities in the Field Offices

Delegation of Authority No. 30-4 (37 FR 17603) as amended is hereby revised.

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), 37 FR 12651, as amended, and because of realignment within Region IV, the following authority is hereby redelegated to

the positions within Region IV as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. *Small Business Act Section 7(a) Loans.* To approve or decline business loans not exceeding the following amounts (SBA share):

a. Assistant Regional Director for Finance and Investment	$350,000
b. District Director	350,000
c. Assistant District Director for Finance and Investment	350,000
d. Branch Manager, Gulfport, Miss., Branch Office	50,000
e. Chief District Financing Division	50,000

2. *Economic Opportunity (EO) Loans.* To approve or decline economic opportunity loans not exceeding $50,000 (SBA share).

a. Assistant Regional Director for Finance & Investment.
b. District Director.
c. Assistant District Director for Finance & Investment.
d. Branch Manager, Gulfport, Mississippi, Branch Office.
e. Chief, District Financing Division.

3. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans, not exceeding the following amounts (SBA share):

a. Assistant Regional Director for Finance and Investment	$350,000
b. District Director	350,000
c. Assistant District Director for Finance and Investment	350,000
d. Branch Manager, Gulfport, Miss., Branch Office	50,000
e. Chief, District Financing Division	50,000

4. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

(1) Assistant Regional Director for Finance and Investment, $350,000.

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Branch Manager, Gulfport, Miss., Branch Office	50,000
(5) Chief, District Financing Division	50,000

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, and coal mine health and safety and handicapped assistance, and strategic arms limitation economic injury loan participation agreements with banks:

(1) Ass't Regional Director for Finance Investment.
(2) District Director.
(3) Ass't District Director for Finance Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

b. To enter into blanket loan guarantee agreements with banks:

(1) Ass't Regional Director for Finance Investment.
(2) District Director.
(3) Ass't District Director for Finance Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Ass't Regional Director for Finance Investment.
(2) District Director.
(3) Ass't District Director for Finance Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

3. To cancel, reinstate, modify and amend authorizations:

a. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, handicapped assistance, and coal mine health and safety, and strategic arms limitation economic injury loans:

(1) Ass't Regional Director for Finance Investment.
(2) District Director.
(3) Ass't District Director for Finance Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

b. For *fully undisbursed* or *partially disbursed* business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, handicapped assistance, coal mine health and safety loans, and strategic arms limitation economic injury loans:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, handicapped assistance, strategic arms limitation economic injury loans, and occupational safety and health loans personally approved under delegated authority:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

4. To approve minor modifications in fully undisbursed loan authorization:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

5. a. To extend the disbursement period on all loan authorizations:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Branch Manager, Gulfport, Mississippi, Branch Office.

b. To extend the disbursement period on all loan authorizations on loans *fully undisbursed:*

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.
(5) Chief, District Financing Division.

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.
(5) Chief, District Financing Division.

PART II—DISASTER PROGRAM

SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, and strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.

(4) Branch Manager, Gulfport, Mississippi, Branch Office.
(5) Chief, District Financing Division.
(6) Disaster Branch Manager, as assigned.

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000: (None.)

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

a. Assistant Regional Director for Finance and Investment	$500,000
b. District Director	500,000
c. Assistant District Director for Finance and Investment	350,000
d. Branch Manager, Gulfport, Miss., Branch Office	350,000
e. Chief, District Financing Division	50,000

4. To appoint as a processing representative any bank in the disaster area. None.

SECTION B. ADMINISTRATIVE AUTHORITY

1. *Establishment of Disaster Field Offices.* (a) To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (b) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.

a. Assistant Regional Director for Finance & Investment.
b. District Director.

2. *Purchase and Contract Authority.* a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.

(1) Ass't Regional Director for Administration.
(2) Ass't Regional Director for Finance & Investment.
(3) District Director.
(4) Disaster Branch Manager, as assigned.
(5) District Administrative Officer.
(6) Branch Manager, Gulfport, Mississippi, Branch Office.

b. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

(1) Ass't Regional Director for Administration.
(2) Regional Office Services Manager or Assistant.
(3) District Director.
(4) District Administrative Officer.
(5) District Office Services Mngr. or Office Services Ass't.
(6) Branch Manager, Gulfport, Mississippi, Branch Office.

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

SECTION A. SECTION 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline section 501 state development company loans:

a. Without dollar limitation: None.

b. Up to the following amounts (SBA share), provided the official concurs in at least one prior recommendation:

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Branch Manager, Gulfport, Miss., Branch Office	50,000

2. To approve or decline § 502 local development company loans:

a. Up to the following amount (SBA share):

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Branch Manager, Gulfport, Miss., Branch Office	50,000

b. Up to the following amount (SBA share) when project cost does not exceed $1,000,000, provided the official concurs in at least one prior recommendation: None.

c. Up to the following amount (SBA share) when project cost does not exceed $700,000, provided the official concurs in at least one recommendation: None.

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on §§ 501 and 502 loan authorizations:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Branch Manager, Gulfport, Mississippi, Branch Office.

b. To extend the disbursement period on fully undisbursed §§ 501 and 502 loans: None.

2. a. To execute sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

3. a. To cancel, reinstate, modify, and amend authorizations for §§ 501 and 502 loans:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Branch Manager, Gulfport, Mississippi, Branch Office.

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed §§ 501 and 502 loans: None.

4. To enter into § 502 loan participation agreements with banks:

(a) Ass't Regional Director for Finance & Investment.
(b) District Director.
(c) Ass't District Director for Finance & Investment.
(d) Branch Manager, Gulfport, Mississippi, Branch Office.

SECTION C. LEASE GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

(a) Assistant Regional Director for Finance and Investment	$500,000
(b) District Director	500,000

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(a) Ass't Regional Director for Finance & Investment.

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized: None.

PART IV—PORTFOLIO MANAGEMENT (PA) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION, AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or

hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with liquidation of loans, and acquired property:

a. *Excerpt: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participation or guaranty agreement:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.

b. Except: To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; *to authorize the liquidation of a loan; and the cancellation of authority to liquidate:*

(1) Ass't District Director for Finance & Investment.
(2) Chief, District & Branch Portfolio Management Div.

c. Except: To compromise or sell any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan *other than a disaster home loan* and the cancellation of authority to liquidate any loan *other than a disaster home loan:* None.

2. To contract for the services of fee appraisers, engineering, marketing and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation.

(a) Ass't Regional Director for Finance & Investment.
(b) District Director.
(c) Ass't District Director for Finance & Investment.
(d) Chief, District Portfolio Management Division.
(e) Chief, Branch Portfolio Management Division.

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation and acquired collateral, when and as authorized by EDA:

(a) Ass't Regional Director for Finance & Investment.
(b) District Director.
(c) Ass't District Director for Finance & Investment.
(d) Branch Manager, Gulfport, Mississippi, Branch Office.
(e) Chief, District Portfolio Management Division.
(f) Chief, Branch Portfolio Management Division.

SECTION B. PARTICULAR ACTIONS IN SERVICING ACCOUNTS NOT CLASSIFIED "IN LITIGATION"

1. To approve the following actions, except as to non-current § 502 loans:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment.
(4) Branch Manager, Gulfport, Mississippi, Branch Office.
(5) Chief, District Portfolio Management Division.
(6) Chief, Branch Portfolio Management Division.

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. To service, approve payment or recommend denial of claims.

a. Issued in the Region:

(1) Ass't Regional Director for Finance & Investment.

b. Issued in his District:

(1) District Director.
(2) Ass't District Director for Finance & Investment.
(3) Chief, District Portfolio Management Division.

c. Assigned to Gulfport Branch Office:

(1) Branch Manager, Gulfport.
(2) Chief, Branch Portfolio Management Division.

2. To take all actions necessary to mitigate losses from lease guarantees.

a. Issued in the Region:

(1) Ass't Regional Director for Finance & Investment.

b. Issued in his District:

(1) District Director.
(2) Ass't District Director for Finance & Investment.
(3) Chief, District Portfolio Management Division.

c. Assigned to Gulfport Branch Office:

(1) Branch Manager, Gulfport, Mississippi, Branch Office.
(2) Chief, Branch Portfolio Management Division.

PART V—PROCUREMENT AND MANAGEMENT ASSISTANCE

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificates of Competency up to but not exceeding $250,000 bid value received from small business concerns located within Region IV:

a. Ass't Regional Director for Procurement Assistance.

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in:

a. Ass't Regional Director for Procurement Assistance.

SECTION B. SECTION 8(a) CONTRACTING AUTHORITY

1. To enter into contracts, not exceeding the following amounts, on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies or materials to the Government and agreeing as to the terms and conditions of such contracts:

a. Ass't Regional Director for Procurement Assistance, not exceeding $350,000.

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

a. Ass't Regional Director for Procurement Assistance.

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract, not exceeding the following amounts, to be let by any such officer:

a. Ass't Regional Director for Procurement Assistance, $350,000.

SECTION C. SECTION 406 CONTRACT MANAGEMENT AUTHORITY

1. To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administrator for Financial Assistance under the authority granted in Section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:

a. Ass't Regional Director for Management Assistance.

PART VI—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) *Except: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(a) Regional Counsel.
(b) Regional Office Attorney.
(c) District Counsel.
(d) District Office Attorney.
(e) Branch Counsel, Gulfport, Miss., Branch Office.

(2) *Except: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; *to authorize the liquidation of a loan; and the cancellation of authority to liquidate:* None.

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, with the exception of the following, which are reserved to regional and district counsel:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation: None.

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:

a. Regional Counsel.
b. Regional Office Attorney.
c. District Counsel.
d. District Office Attorney.
e. Branch Counsel, Gulfport, Miss., Branch Office.

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:

a. Regional Counsel.
b. Regional Office Attorney.
c. District Counsel.
d. District Office Attorney.
e. Branch Counsel, Gulfport, Miss., Branch Office.
f. Loan Closing Assistant as assigned.

2. To approve, when requested, in advance of disbursements, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:

a. Regional Counsel.
b. Regional Office Attorneys.
c. District Director.
d. District Office Counsel.
e. District Office Attorneys.
f. Branch Manager, Gulfport, Miss., Branch Office.
g. Branch Counsel, Gulfport, Miss., Branch Office.

3. To close, approve EDA loans as authorized. None.

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under programs of the agency, except the SBIC program, as indicated:

a. Loans under Sec. 7 of the Small Business Act, under the Economic Opportunity Act, under the Small Business Investment Act, and under related loan statutes:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment, if assigned.
(4) Chief, Financing Division, if no Ass't District Director for Finance & Investment is assigned.
(5) Branch Manager, Gulfport, Miss., Branch Office.
(6) Ass't Regional Director for Management Assistance.
(7) Ass't District Director for Management Assistance.

b. Lease guarantees:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.

c. Surety Bond Program.

(1) Ass't Regional Director for Finance & Investment.

d. Certificates of Competency, Section 8(a) contracts not involving Divestiture Agreements, and subcontracting programs:

(1) Ass't Regional Director for Procurement Assistance.

e. Section 406 Assistance:

(1) Ass't Regional Director for Management Assistance.
(2) Ass't Regional Director for Finance & Investment.
(3) District Director.
(4) Ass't District Director for Management Assistance.
(5) Ass't District Director for Finance & Investment.
(6) Ass't District Director for Portfolio Mgment. Div.

SECTION B. SIZE DETERMINATION

1. In accordance with Small Business Administration standards and policies, to make initial size determinations, and to make product classification decisions *except* for procurement purposes, as indicated:

a. Loans under Section 7 of the Small Business Act, under the Economic Opportunity Act, under the Small Business Investment Act, and under related loan statutes:

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.
(3) Ass't District Director for Finance & Investment, if assigned.
(4) Supervisory Loan Specialist, Financing Division, if no Ass't District Director for Finance & Investment is assigned.
(5) Branch Manager, Gulfport, Mississippi, Branch Office.
(6) Ass't Regional Director for Management Assistance.

(7) Ass't District Director for Management Assistance.

b. Lease guarantees

(1) Ass't Regional Director for Finance & Investment.
(2) District Director.

c. Certificates of Competency, Sec. 8(a) contracts not involving Divestiture Agreements, and subcontracting programs, *except* product classification decisions for procurement purposes:

(1) Ass't Regional Director for Procurement Assistance.

2. Product classification decisions for procurement purposes are made by contracting officers.

PART VIII—ADMINISTRATION

SECTION A. AUTHORITY TO PURCHASE, RENT, OR CONTRACT FOR EQUIPMENT, SERVICES AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. attorneys in foreclosure cases:

a. Assistant Regional Director for Administration.
b. District Director.
c. District Administrative Officer.
d. Branch Manager, Gulfport, Mississippi, Branch Office.

2. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter:

a. Assistant Regional Director for Administration.
b. Regional Office Services Manager or Office Services Ass't.
c. District Director.
d. District Administrative Officer.
e. District, Office Services Manager or Office Services Ass't.
f. Branch Manager, Gulfport, Mississippi, Branch Office.

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration:

a. Assistant Regional Director for Administration.
b. Regional Office Services Manager or Office Services Ass't.
c. District Director.
d. District Administrative Officer.
e. District, Office Services Manager or Office Services Ass't.
f. Branch Manager, Gulfport, Mississippi, Branch Office.

4. Use of Seal of the Small Business Administration. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the non-existence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications:

a. District Director.
b. Branch Manager, Gulfport, Mississippi, Branch Office.

PART IX—EXERCISE OF AUTHORITY BY OFFICE IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART X—RESCISSION OF AUTHORITY

All authority previously delegated by the Administrator to specific positions in Region IV is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective dates:

Atlanta Regional Office, September 30, 1973.
Atlanta District Office, September 30, 1973.
Birmingham District Office, November 11, 1973.
Charlotte District Office, December 16, 1973.
Columbia District Office, November 11, 1973.
Jackson District Office, December 16, 1973.
Jacksonville District Office, November 11, 1973.
Louisville District Office, November 11, 1973.
Miami District Office, November 11, 1973.
Nashville District Office, November 11, 1973.
Gulfport Branch Office, December 16, 1973.

WILEY S. MESSICK,
Regional Director,
Region IV.

[FR Doc.74-7032 Filed 3-26-74;8:45 am]

[Delegation of Authority No. 30—Region IX; Rev. 1]

ASSISTANT REGIONAL DIRECTOR FOR F AND I, ET AL.

Delegation of Authority To Conduct Program Activities in Region IX

Delegation of Authority No. 30, Region IX, (37 FR 17624), as amended, (37 FR 20288 and 38 FR 7033), is hereby revised in its entirety to reflect proper position title responsibility for certain program functions as a result of the establishment of a District Office in the Regional Office city and various position changes throughout the region, and reads as follows:

Pursuant to the authority delegated to Regional Directors by Delegation of Authority No. 30 (Revision 14), (37 FR 12651), as amended, the following authority is hereby redelegated to the positions within Region IX as indicated herein:

PART I—FINANCING PROGRAM

SECTION A. LOAN APPROVAL AUTHORITY

1. *Small Business Act section 7(a) loans.* To approve or decline business loans not exceeding the following amounts (SBA share):

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Chief, Financing Division	350,000
(5) District Supervisory Loan Specialist	50,000

2. *Economic Opportunity (EO) Loans.* To approve or decline economic opportunity loans not exceeding $50,000 (SBA share).

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) District Supervisory Loan Specialist.

3. *Displaced Business and Other Economic Injury Loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to prepare such loans up to the following amounts (SBA share):

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Chief, Financing Division	350,000
(5) District Supervisory Loan Specialist	50,000

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health, strategic arms limitation, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA) share: Does Not Apply.

4. *Handicapped Assistance Loans.* To approve or decline handicapped assistance loans not exceeding the following amounts (SBA share):

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000
(4) Chief, Financing Division	350,000
(5) District Supervisory Loan Specialist	50,000

SECTION B. OTHER FINANCING AUTHORITY

1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, strategic arms limitation economic injury, and handicapped assistance loan participation agreements with banks:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) District Supervisory Loan Specialist.
(6) Branch Manager.

b. To enter into blanket loan guarantee agreements with banks:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.

2. a. To execute loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) District Supervisory Loan Specialist.
(6) Branch Manager.

3. To cancel, reinstate, modify, and amend authorizations: a. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, strategic arms limitation economic injury, and handicapped assistance loans:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) District Supervisory Loan Specialist.
(6) Branch Manager.

b. For fully undisbursed or partially disbursed business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, strategic arms limitation economic injury, and handicapped assistance loans:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) Chief, Portfolio Management Division (for partially disbursed loans).
(6) District Supervisory Loan Specialist.
(7) Branch Manager.

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, strategic arms limitation economic injury, and handicapped assistance loans personally approved under delegated authority: Does Not Apply.

4. To approve minor modifications in fully undisbursed loan authorizations:

(1) District Loan Specialist, FD.
(2) Branch Loan Specialist, FD.

5. a. To extend the disbursement period on all loan authorizations:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Branch Manager.

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:

(1) Chief, Financing Division.
(2) District Supervisory Loan Specialist, FD.
(3) District Loan Specialist, FD.
(4) Branch Loan Specialist, FD.

6. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) District Supervisory Loan Specialist.

PART II—DISASTER PROGRAM

SECTION A. DISASTER LOAN AUTHORITY

1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of: (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and

(2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture (for natural disasters) except to the extent of refinancing of a previous SBA disaster loan.

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Financing Division.
(5) Disaster Branch Manager.

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health, and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) District Supervisory Loan Specialist.
(2) Disaster Branch Supervisory Loan Specialist.

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

(1) Assistant Regional Director for Finance and Investment	$500,000
(2) District Director	500,000
(3) Assistant District Director for Finance and Investment	500,000
(4) Chief Financing Division	500,000
(5) District Supervisory Loan Specialist	50,000
(6) Disaster Branch Manager	500,000

4. To appoint as a processing representative any bank in the disaster area:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Branch Manager.
(4) Disaster Branch Manager.

5. To approve the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired.

(1) Assistant Regional Director for F&I.

SECTION B. ADMINISTRATIVE AUTHORITY

1. *Establishment of Disaster Field Offices.* a. To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (b) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.

(1) Assistant Regional Director for F&I.
(2) Assistant Regional Director for Administration.
(3) Disaster Coordinator.
(4) District Director.
(5) Disaster Branch Manager.

2. *Purchase and Contract Authority.* a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.

(1) Assistant Regional Director for F&I.
(2) Disaster Coordinator.
(3) Assistant Regional Director for Administration.
(4) Regional Office Services Manager.
(5) Regional Office Services Assistant.
(6) District Director.
(7) District Administrative Officer.
(8) Disaster Branch Manager.

b. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.

(1) Assistant Regional Director for F&I.
(2) Disaster Coordinator.
(3) Assistant Regional Director for Administration.
(4) Regional Office Services Manager.
(5) Regional Office Services Assistant.
(6) District Director.
(7) District Administrative Officer.
(8) Disaster Branch Manager.

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

SECTION A. SECTIONS 501 AND 502 LOAN APPROVAL AUTHORITY

1. To approve or decline Section 501 state development company loans: a. Without dollar limitation: Does Not Apply.

b. Up to the following amounts (SBA share), provided the official concurs in at least one prior recommendation:

(1) Assistant Regional Director for Finance and Investment	$350,000
(2) District Director	350,000
(3) Assistant District Director for Finance and Investment	350,000

2. To approve or decline section 502 local development company loans: a. Up

to the following amount (SBA share): Does Not Apply.

b. Up to the following amount (SBA share) when project cost does not exceed $1 million, provided the official concurs in at least one prior recommendation:

(1) Assistant Regional Director for Finance and Investment---- $350,000
(2) District Director---------- 350,000
(3) Assistant District Director for Finance and Investment---- 350,000

c. Up to the following amount (SBA share) when project cost does not exceed $700,000, provided the official concurs in at least one prior recommendation: Does Not Apply.

SECTION B. OTHER 501 AND 502 AUTHORITY

1. a. To extend the disbursement period on sections 501 and 502 loan authorizations:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) District Supervisory Economic Development Specialist.
(6) District Economic Development Specialist.

b. To extend the disbursement period on fully undisbursed sections 501 and 502 loans: Does Not Apply.

2. a. To execute sections 501 and 502 loan authorizations for loans approved by higher authority and for loans personally approved under delegated authority:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) Supervisory Economic Development Specialist.

3. a. To cancel, reinstate, modify, and amend authorizations for sections 501 and 502 loans:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) District Supervisory Economic Development Specialist.

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed or partially disbursed sections 501 and 502 loans: Does Not Apply.

4. To enter into section 502 loan participation agreements with banks:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) District Supervisory Economic Development Specialist.
(6) District Economic Development Specialist.

SECTION C. LEASE GUARANTEE APPROVAL AUTHORITY

1. To approve or decline applications for the direct guarantee of payment of rent not to exceed the following amounts:

(1) Assistant Regional Director for Finance and Investment---- $500,000
(2) District Director---------- 500,000
(3) Assistant District Director for Finance and Investment---- 500,000
(4) Chief, CED Division---------- 250,000
(5) Supervisory Economic Development Specialist---------- 250,000

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(1) Assistant Regional Director for F&I.
(2) District Director, SF/DO only.
(3) Assistant District Director for F&I, SF/DO only.
(4) Chief, CED, Division, SF/DO only.
(5) Supervisory Economic Development Specialist, SF/DO only.

SECTION D. OTHER LEASE GUARANTEE AUTHORITY

1. a. To issue and modify commitment letters:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) Supervisory Economic Development Specialist.

SECTION E. EDA LOAN DISBURSEMENT AUTHORITY

1. a. To disburse approved EDA loans, as authorized:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, CED Division.
(5) District Supervisory Economic Development Specialist.

PART IV—PORTFOLIO MANAGEMENT (PM) PROGRAM

SECTION A. PORTFOLIO MANAGEMENT, SERVICING, COLLECTION, AND LIQUIDATION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans, exclusive of matters in litigation, and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; the approval of bank applications for use of liquidity privilege under the loan guaranty plan; and to advertise regarding the public sale of collateral in connection with the liquidation of loans, and acquired property.

a. *Except: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Portfolio Management Division.
(5) Supervisory Loan Specialist.
(6) Branch Manager.

b. *Except: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; *to authorize the liquidation of a loan;* and *the cancellation of authority to liquidate:* Does Not Apply.

c. *Except: To compromise or sell* any primary obligation or other evidence or indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan *other than a disaster home loan* and the cancellation of authority to liquidate any loan *other than a disaster home loan:* Does Not Apply.

2. To contract for the services of fee appraisers, engineering, marketing, and feasibility studies, and other required services, in conjunction with loan processing, servicing, and loan liquidation:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Portfolio Management Division.
(5) District Supervisory Loan Specialist.
(6) Branch Manager.

3. To take all necessary action in liquidating Economic Development Administration (EDA) loans, exclusive of matters in litigation, and acquired collateral, when and as authorized by EDA:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Portfolio Management Division.
(5) District Supervisory Loan Specialist.

SECTION B. LOAN ADMINISTRATION, SERVICING AND COLLECTION AUTHORITY

1. To take all necessary actions in connection with the administration, servicing, and collection of all loans, *other than those accounts classified as "in liquidation,"* and to do and perform and

to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing, the assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator; the execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations releases (in whole or part) of liens, satisfaction pieces, affidavits, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing; and the approval of bank applications for use of liquidity privilege under the loan guaranty plan:

a. *Except: To compromise or sell* any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate: Does Not Apply.

2. To approve the following actions:

a. Use of such portions of the cash surrender value of assigned life insurance as are required to pay premiums due on the policy.

b. Release of dividends on assigned life insurance or consent to application of dividends against premiums due or to become due.

c. Minor modifications in the authorizations.

d. Extension of disbursement period on loans partially undisbursed.

e. Extension of initial principal payments.

f. Adjustment of interest payment dates.

g. Release of hazard insurance checks not in excess of $500 and endorsement of such checks on behalf of the Agency where SBA is named as joint loss payee.

h. Release of equipment with or without consideration where the value of equipment being released does not exceed $500.

(1) Concerning all current direct and participation loans and First Mortgage Plan 502 Loans:

1. District Loan Specialist.
2. Branch Loan Specialist.

(2) Concerning all direct and participation loans: Does No Apply.

SECTION C. LEASE GUARANTEE ADMINISTRATION AND SERVICING AUTHORITY

1. a. To service claims arising under all lease insurance policies issued in the region, approving the payment, or recommending denial of such claims:

(1) Assistant Regional Director for F&I.

b. To service claims arising under all lease insurance policies issued in the district, approving the payment, or recommending denial of such claims:

(1) District Director.
(2) Assistant District Director for F&I.
(3) Chief, Portfolio Management Division.
(4) Supervisory Loan Specialist.

c. To service claims arising under all lease insurance policies issued in the branch office area, approving the payment or recommending denial of such claims:

(1) Branch Manager.

2. To take all actions necessary to mitigate losses from lease guarantees:

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.
(4) Chief, Portfolio Management.
(5) Supervisory Loan Specialist.
(6) Branch Manager.

PART V—PROCUREMENT ASSISTANCE (PA) PROGRAM

SECTION A. CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for Certificates of Competency up to but not exceeding $250,000 bid value received from small business concerns located within the geographical jurisdiction of the following: Does Not Apply.

2. To deny an application for a Certificate of Competency when an adverse determination as to capacity or credit is concurred in: Does Not Apply.

SECTION B. SECTION 8(a) CONTRACTING AUTHORITY

1. To enter into contracts not exceeding the following amount on behalf of the Small Business Administration with the U.S. Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies or materials to the Government and agreeing as to the terms and conditions of such contracts:

(1) Assistant Regional Director for Procurement Assistance	$500,000
(2) District Director	100,000
(3) Assistant District Director for Procurement Assistance	100,000

2. To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts:

(1) Assistant Regional Director for PA.
(2) District Director.
(3) Assistant District Director for PA.

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent to perform any specific Government procurement contract not exceeding the following amounts to be let by any such officer:

(1) Assistant Regional Director for Program Assistance	$500,000
(2) District Director	100,000
(3) Assistant District Director for Program Assistance	100,000

PART VI—MANAGEMENT ASSISTANCE (MA) PROGRAM

SECTION 406 CONTRACT MANAGEMENT AUTHORITY

To take all necessary actions in connection with the administration and management of contracts, executed by the Associate Administrator for Procurement and Management Assistance under the authority granted in section 406 of the Economic Opportunity Act of 1964, as amended, except changes, amendments, modifications, or termination of the original contract:

(1) Assistant Regional Director for MA.
(2) Assistant District Director for MA.

PART VII—LEGAL SERVICES

SECTION A. AUTHORITY TO CONDUCT LITIGATION ACTIVITIES

1. To conduct all litigation activities, including SBIC matters as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) or liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation.

(1) *Except:* To compromise or sell any primary obligation or other evidence of

indebtedness owed to the Agency for a sum less than the total amount due thereon; and to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement:

(1) Regional Counsel.

(2) *Except:* To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement; to authorize the liquidation of a loan; and the cancellation of authority to liquidate:

(1) District Counsel.
(2) Branch Counsel.

2. To conduct all litigation activities, including SBIC matters, as assigned, and to take all action necessary in connection with matters in litigation; and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, with the exception of the following, which are reserved to regional and district counsel and district attorneys:

a. The assignment, endorsement, transfer and delivery of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator, as to all matters in litigation.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates, and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing, as to all matters in litigation: Does Not Apply.

3. To take all necessary action liquidating Economic Development Administration (EDA) loans having litigative aspects, when and as authorized by EDA:

(1) Regional Counsel.
(2) District Directors.
(3) District Counsel.
(4) District Attorneys.
(5) Branch Manager.
(6) Branch Counsel.

SECTION B. LOAN CLOSING AUTHORITY

1. To close and disburse approved SBA loans and rehabilitation loans for Department of Housing and Urban Development:

(1) Regional Counsel.
(2) District Counsel.
(3) District Attorneys.
(4) Branch Counsel.

2. To close and disburse approved SBA loans: Does Not Apply.

3. To close approved EDA loans, as authorized:

(1) Regional Counsel.
(2) District Director.
(3) District Counsel.
(4) District Attorneys.
(5) Branch Manager.
(6) Branch Counsel.

4. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization:

(1) Regional Counsel.
(2) District Counsel.
(3) District Attorneys.
(4) Branch Counsel.

PART VIII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. ELIGIBILITY DETERMINATIONS

1. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under any program of the Agency:*

(1) *Except:* The SBIC program:

(1) District Director.

(2) *Except:* The SBIC, procurement assistance and management assistance programs:

(1) Assistant Regional Director for F&I.
(2) Assistant District Director for F&I.

2. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under the procurement assistance program of the Agency:*

(1) Assistant Regional Director for PA.
(2) Assistant District Director for PA.

3. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance *under the management assistance program of the Agency:*

(1) Assistant Regional Director for MA.
(2) Assistant District Director for MA.

4. All positions to which approval authority in any program has been delegated are authorized to determine eligibility of applicants to the extent of the approval authority delegated to that position.

SECTION B. SIZE DETERMINATIONS

1. a. To make initial size determinations *in all cases* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financial assistance purposes only:* Does Not Apply.

b. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions *for financing purposes only:*

(1) Assistant Regional Director for F&I.
(2) District Director.
(3) Assistant District Director for F&I.

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, *except sections 501 and 502 loans,* and further, to make product classification decisions *for financing purposes only:*

(1) Chief, Finance Division.

d. To make initial size determinations *in all sections 501 and 502 loans* within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for sections 501 and 502 loans only:

(1) Chief, CED Division.

e. To make initial size determinations in all procurement assistance programs within the meaning of the Small Business Size Standards Regulations, as amended.

(1) Assistant Regional Director for PA.
(2) District Director.
(3) Assistant District Director for PA.

f. Product classification decisions for procurement purposes are made by contracting officers.

PART IX—ADMINISTRATIVE

SECTION A. AUTHORITY TO PURCHASE, RENT OR CONTRACT FOR EQUIPMENT, SERVICES, AND SUPPLIES

1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. Attorneys in Foreclosure cases:

(1) Assistant Regional Director for Administration.
(2) Regional Office Services Manager.
(3) Regional Office Services Assistant.
(4) District Director.
(5) District Administrative Officer.
(6) Branch Manager.

2. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

(1) Assistant Regional Director for Administration.
(2) Regional Office Services Manager.
(3) Regional Office Services Assistant.
(4) District Director.
(5) District Administrative Officer.
(6) Branch Manager.

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

(1) Assistant Regional Director for Administration.
(2) Regional Office Services Manager.
(3) Regional Office Services Assistant.
(4) District Director.

(5) District Administrative Officer.
(6) Branch Manager.

SECTION B. USE OF SEAL OF THE SMALL BUSINESS ADMINISTRATION

1. To certify true copies of any books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such materials; to certify the non-existence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications:

(1) District Director.
(2) Branch Manager.

PART X—EXERCISE OF AUTHORITY BY OFFICE IN AN ACTING CAPACITY AND REDELEGATION

The authority delegated herein to a specific position may not be redelegated; however, such authority may be exercised by an SBA employee designated as acting in that position.

PART XI—RESCISSION OF AUTHORITY

All authority previously delegated by the Regional Director to specific positions in Region IX is hereby rescinded without prejudice to actions taken under all such delegations of authority prior to effective date hereof.

Effective date: October 15, 1973.

GILBERT MONTANO,
Regional Director, Region IX.

[FR Doc.74-7031 Filed 3-26-74;8:45 am]

[Declaration of Disaster Loan Area 1043]

TEXAS

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of February 1974, because of the effects of a certain disaster, damage resulted to property located in the State of Texas;

Whereas, the Small Business Administration has investigated and received reports of other investigation of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Orange, Hardin, and Liberty Counties, Texas, and adjacent affected areas, suffered damage or destruction resulting from severe storms and flooding which occurred the beginning of February 1974.

Applications will be processed under the provisions of Public Law 93-24.

Office:
Small Business Administration
District Office
Niels Esperson Building, Room 1210
808 Travis Street
Houston, Texas 77002

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to May 16, 1974.

Dated: March 15, 1974.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.74-7030 Filed 3-26-74;8:45 am]

TARIFF COMMISSION

[332-70]

CONVERSION OF TSUS INTO FORMAT OF BRUSSELS TARIFF NOMENCLATURE

Tentative Hearing Schedule

The U.S. Tariff Commission hereby gives notice of the tentative dates, locations, and subject matter of public hearings scheduled to be held on preliminary drafts of chapters of the Tariff Schedules of the United States (TSUS) converted into the format of the Brussels Tariff Nomenclature (BTN). Each such hearing will be the subject of a further public notice when the preliminary drafts of chapters are released. Public hearings were previously announced on March 8 and 15, 1974, with respect to chapters 44 through 49 (39 F.R. 9719 of March 13, 1974) and chapters 25, 68, 69, 70, 72, and 97 (39 F.R. 10501 of March 20, 1974).

TENTATIVE SCHEDULE OF HEARINGS

APR. 29, 1974, TO BE HELD IN NEW YORK CITY

Ch.
3 Fish, crustaceans and molluscs.
13 Raw vegetable materials of a kind suitable for use in dyeing or in tanning; lacs; gums, resins and other vegetable saps and extracts.
14 Vegetable plaiting and carving materials; vegetable products not elsewhere specified or included.
17 Sugars and sugar confectionery.
22 Beverages, spirits and vinegar.
41 Raw hides and skins (other than furskins) and leather.
42 Articles of leather, saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut).
43 Furskins and artificial fur; manufactures thereof.
64 Footwear, gaiters and the like; parts of such articles.
71 Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewelery.

MAY 13, 1974, TO BE HELD IN CHICAGO, ILL.

1 Live animals.
2 Meat and edible meat offals.
4 Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included.
5 Products of animal origin, not elsewhere specified or included.
10 Cereals.
11 Products of the milling industry; malt and starches; gluten; inulin.
12 Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder.
15 Animal and vegetable fats and oils and their cleavage products; prepared edible fats; animal and vegetable waxes.
19 Preparations of cereals, flour or starch; pastrycooks' products.
23 Residues and waste from the food industries; prepared animal fodder.
84 Boilers, machinery and mechanical appliances; parts thereof.
85 Electrical machinery and equipment; parts thereof.
92 Musical instruments; sound recorders and reproducers; television image and sound recorders and reproducers, magnetic; parts and accessories of such articles.

MAY 28, 1974, TO BE HELD IN WASHINGTON, D.C.

6 Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage.
9 Coffee, tea, maté and spices.
18 Cocoa and cocoa preparations.
24 Tobacco.
67 Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair; fans.
73 Iron and steel and articles thereof.
94 Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings.
95 Articles and manufactures of carving or moulding materials.
98 Miscellaneous manufactured articles.
99 Works of art, collectors' pieces, and antiques.

JUNE 3, 1974, TO BE HELD IN DETROIT, MICH.

87 Vehicles, other than railway or tramway rolling- stock, and parts thereof.

JULY 8, 1974, TO BE HELD IN NEW YORK, N.Y.

16 Preparations of meat, of fish, of crustaceans or molluscs.
21 Miscellaneous edible preparations.
26 Metallic ores, slag and ash.
65 Headgear and parts thereof.
66 Umbrellas, sunshades, walking-sticks, whips, ridingcrops and parts thereof.
74 Copper and articles thereof.
75 Nickel and articles thereof.
77 Magnesium and beryllium and articles thereof.
78 Lead and articles thereof.
79 Zinc and articles thereof.
80 Tin and articles thereof.

JULY 15, 1974, TO BE HELD IN SAN FRANCISCO, CALIF.

7 Edible vegetables and certain roots and tubers.
8 Edible friut and nuts; peel of melons or citrus fruit.
20 Preparations of vegetables, fruit or other parts of plants.
88 Aircraft and parts thereof; parachutes; catapults and similar aircraft launching gear; ground flying trainers.

JULY 29 1974, TO BE HELD IN WASHINGTON, D.C.

27 Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.
36 Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations.
37 Photographic and cinematographic goods.
76 Aluminum and articles thereof.
81 Other base metals employed in metallurgy and articles thereof.
82 Tools, implements, cutlery, spoons and forks, of base metals; parts thereof.
83 Miscellaneous articles of base metal.
86 Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered).
89 Ships, boats and floating structures.
90 Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof.
91 Clocks and watches and parts thereof.
93 Arms and ammunition; parts thereof.

96 Brooms, brushes, feather dusters, powder-puffs and sieves.

AUG. 12, 1974, TO BE HELD IN NEW YORK, N.Y.

28 Inorganic chemicals; organic and inorganic compounds of precious metals, rare earth metals, of radioactive elements and of isotopes.
29 Organic chemicals.
30 Pharmaceutical products.
31 Fertilizers.
32 Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks.
33 Essential oils and resinoids; perfumery, cosmetics and toil preparations.
34 Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modeling pastes and "dental waxes".
35 Albuminoidal substances; glues.
38 Miscellaneous chemical products.
39 Artificial resins and plastic materials, cellulose esters and ethers; articles thereof.
40 Rubber, synthetic rubber, factice, and articles thereof.

AUG. 19, 1974, TO BE HELD IN WASHINGTON, D.C.

50 Silk and waste silk.
51 Man-made fibres (continous).
52 Metaleized textiles.
53 Wool and other animal hair.
54 Flax and ramie.
55 Cotton
56 Man-made fibres (discontinuous).
57 Other vegetable textile materials; paper yarn and woven fabrics of paper yarn.

AUG. 26, 1974, TO BE HELD IN WASHINGTON, D.C.

58 Carpets, mats, matting and tapestries; pile and chenille fabrics; narrow fabrics; trimmings; tulle and other net fabrics; lace; embroidery.
59 Wadding and felt; twine, cordage, ropes and cables; special fabrics; impregnated and coated fabrics; textile articles of a kind suitable for industrial use.
60 Knitted and crocheted goods.
61 Articles of apparel and clothing accessories of textile fabric, other than knitted or crocheted goods.
62 Other made up textile articles.
63 Old clothing and other textile articles; rags.

By order of the Commission.
Issued: March 21, 1974.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.74-6988 Filed 3-26-74;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 473]

ASSIGNMENT OF HEARINGS

MARCH 22, 1974.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC-124211 Sub 232, Hilt Truck Line, Inc., MC-138144 Sub-2, Fred Olson Co., Inc., now being assinged hearing June 3, 1974 (1 week), at Chicago, Ill., in a hearing room to be later designated.
MC-F-11953, Carolina Freight Carriers Corp.—Purchase—Deerfield Motor Express, Inc., and MC-2253 Sub 60, Carolina Freight Carriers Corp., now being assigned hearing June 10, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC 4963 Sub-40, Alleghany Corporation, DBA Jones Motor, now assigned April 8, 1974, at New York City, N.Y., is cancelled and transferred to Modified Procedure.
MC 136408 Sub-14, Cargo Container Carrier Corp., now being assigned June 18, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC 124692 Sub-125, Sammons Trucking, now being assigned June 19, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC 110420 Sub-693, Quality Carriers, Inc., and MC 110988 Sub-304, Schneider Tank Lines, Inc., now being assigned June 21, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC-F-11896, Crouse Cartage Company—Purchase—Marc Truck Lines, Inc., now being assigned June 24, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC 123389 Sub-15, Crouse Cartage Company, now being assigned June 24, 1974, at Chicago, Ill., in a hearing room to be later designated.
MC 128521 Sub-2, Birmingham-Nashville Express, Inc., now being assigned hearing June 3, 1974 (2 weeks), at New Orleans, La., in a hearing room to be later designated.
MC 217 Subs 16 and 17, Point Transfer, Inc., MC 8600 Sub 31, Werner Continental, Inc., MC 13569 Subs 27 and 30, The Lake Shore Motor Freight Co., MC 14552 Sub 50, J. V. McNicholas Transfer Co., and MC 138286 Sub 2, John F. Scott Company, now assigned April 16, 1974, at Pittsburgh, Pa., postponed to May 13, 1974 (2 weeks), at Pittsburgh, Pa., in a hearing room to be later designated.
MC-F-11991, Roadway Express, Inc.—Purchase (Portion)—England Transportation Co., Inc., and MC-F-12029, Strickland Transportation Co., Inc.—Purchase (Portion)—England Transportation Co., Inc., now being assigned continued hearing June 17, 1974 (2 days), at New Orleans, La., in a hearing room to be later designated.
MC 72243 Sub 34, The Aetna Freight Lines, Inc., Extension—New Orleans, La., and MC 117565 Sub 82, Motor Service Co., Inc., Extension—New Orleans, La., now being assigned hearing June 19, 1974 (3 days), at New Orleans, La., in a hearing room to be later designated.
MC 133168 Sub 2, Delta Express, Inc., now being assigned hearing June 24, 1974 (1 week), at New Orleans, La., in a hearing room to be later designated.
MC-C-8235, Smitty's Van & Storage Inc., Julius Schmidt, DBA Jet Moving & Storage, Andrews Van Lines, Inc., Greyhound Van Lines, Inc., and King Van Lines Investigation of Operations, now assigned April 1, 1974, at Kansas City, Mo., is cancelled.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-7104 Filed 3-26-74;8:45 am]

[Ex Parte 241; Rule 19, Exemption 61, Amdt. 2]

MISSOURI PACIFIC RAILROAD CO.

Exemption From Mandatory Car Service Rules

MARCH 22, 1974.

Upon further consideration of Exemption No. 61 issued January 20, 1974.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 61 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to *expire June 15, 1974.*

This amendment shall become effective March 15, 1974.

Issued at Washington, D.C., March 12, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-7098 Filed 3-26-74;8:45 am]

[Notice No. 11]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MARCH 22, 1974.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-2202 (Deviation No. 126), ROADWAY EXPRESS, INC., P.O. Box 471, Akron, Ohio 44309, filed March 18, 1974. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follow: (1) From junction U.S. Highway 66 and Oklahoma Highway 33 at or near Tulsa, Okla., over Oklahoma Highway 33 to junction U.S. Highway 69, and (2) from junction U.S. Highway 69 and U.S. Highway 62 at or near Muskogee, Okla., over

U.S. Highway 62 to junction U.S. Highway 75 near Okmulgee, Okla., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follow: (1) From junction U.S. Highway 66 and Oklahoma Highway 33 at or near Tulsa, Okla., over U.S. Highway 66 to junction U.S. Highway 69, thence over U.S. Highway 69 to junction Oklahoma Highway 33, and (2) from junction U.S. Highway 69 and U.S. Highway 62 at or near Muskogee, Okla., over U.S. Highway 69 to junction U.S. Highway 266, thence over U.S. Highway 266 to junction U.S. Highway 75, thence over U.S. Highway 75 to junction U.S. Highway 62 near Okmulgee, Okla., and return over the same routes.

No. MC-42487 (Deviation No. 102), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 7101 South Cicero Avenue, Chicago, Illinois 60629, filed March 15, 1974. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cincinnati, Ohio, over Interstate Highway 75 to junction Interstate Highway 64 at or near Lexington, Ky., thence over Interstate Highway 64 to junction Interstate Highway 77 at or near Charleston, W. Va., thence over Interstate Highway 77 to junction U.S. Highway 460 near Princeton, W. Va., thence over U.S. Highway 460 to junction Virginia Highway 100 at or near Pearisburg, Va., thence over Virginia Highway 100 to junction U.S. Highway 221 at or near Hillsville, Va., thence over U.S. Highway 221 to junction U.S. Highway 52 at or near Hillsville, Va., thence over U.S. Highway 52 to Winston-Salem, N.C., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cincinnati, Ohio, over U.S. Highway 25 to Corbin, Ky., thence over U.S. Highway 25E to Newport, Tenn., thence over U.S. Highway 25 to Asheville, N.C., thence over U.S. Highway 70 to Statesville, N.C., thence over U.S. Highway 64 to Mocksville, N.C., thence over U.S. Highway 158 to Winston-Salem, N.C., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-7103 Filed 3-26-74;8:45 am]

[Notice No. 23]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MARCH 22, 1974.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the new Special Rule 1100 247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1974.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 138317 (REPUBLICATION), filed January 2, 1973, and published in the FR issue of February 8, 1973, and republished this issue. Applicant: CEMENT TRANSPORT, INC., Valley Station, Ky. 40272. Applicant's representative: Ollie L. Merchant, Suite 202, 140 South Fifth Street, Louisville, Ky. 40202. An Order of the Commission, Review Board Number 1, dated March 12, 1974, and served March 15, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *cement*, in bulk, in tank vehicles, and in bags, from the plant site of the Klintkote Company-Diamond Kosmos Division at or near Kosmosdale, Ky., to those points in Illinois, Indiana, and Ohio, within 180 miles of Kosmosdale, and to points in Tennessee, subject to the restriction that applicant shall not tack or join such grant with any authority to perform a through service; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to accurately indicate the authority applied for in part (1) of the application which should read cement, in bulk, in tank vehicles, and in bags, from Kosmosdale, Ky., to points in Illinois, Indiana, and Ohio, wtihin 180 miles of Kosmosdale, Ky., and to points in Tennessee. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld until April 26, 1974, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 138661 (REPUBLICATION), filed April 16, 1973, and published in the FR issue of March 13, 1974, and republished this issue. Applicant: ROBERT E. KUKURUZA, doing business as BTS, 50 Solano Avenue, Vallejo, Calif. 94590. Applicant's representative: Jack B. Burstein, 1730 Sonoma Boulevard, Vallejo, Calif. 94590. An Order of the Commission, Review Board Number 1, dated February 21, 1974, and served March 1, 1974, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, of *wrecked driveable automobiles*, in truckaway service, from San Francisco, San Jose, and Vallejo, Calif., to Troutdale, Oreg., under a continuing contract or contracts with Arrow Factors, of Troutdale, Oreg., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and with the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the correct docket number of this application as MC-138661 instead of MC-138861, as erroneously published in the FR issue of March 13, 1974. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld until April 26, 1974, of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 138770 (Sub-No. 1) (Republication), filed April 26, 1973, and published in the FR issue of June 21, 1973, and republished this issue. Applicant: BOYD TRUCKING CO., INC., 637 South Hamilton Street, Dalton, Ga. 30720. Applicant's representative: Ariel V. Conlin, 53 Sixth Street NE., Atlanta, Ga. 30308. An Order of the Commission, Review Board Number 1, dated March 4, 1974, and served March 12, 1974, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *textile and textile products*, (1) from Winchester, Tenn., to Dalton and Ringgold, Ga.; (2) from Trenton and Chatsworth, Ga., to Winchester, Tenn.; and (3) from Decatur, Tenn., to points in that part of Georgia north of a line beginning at the Alabama-Georgia State line and extending along Interstate Highway 20 to Atlanta, Ga., and thence northeasterly along Interstate Highway 85 to the South Carolina-Georgia State line; that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to

indicate the correct number of this application to be MC–138770 (Sub-No. 1) rather than MC–138711 as previously published in the FEDERAL REGISTER issue of June 21, 1973. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld until April 26, 1974, of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 107654 (Sub-No. 3) (Notice of Filing of Petition To Modify Permit) filed March 7, 1974. Petitioner: GLEN E. TRIPP, doing business as SPECIAL SERVICE, 760 Lindenwood Lane, Medina, Ohio 44246. Petitioner's representative: Paul F. Beery, 8 East Broad Street, Ninth Floor, Columbus, Ohio 43215. Petitioner holds a motor *contract carrier* permit in No. MC 107654 (Sub-No. 3) issued October 9, 1962, authorizing transportation, over irregular routes, of *canned and preserved foods*, from Medina, Ohio, to Baltimore, Md., Wilmington, Del., and the District of Columbia, under a continuing contract or contracts with The H. W. Madison Company of Medina, Ohio. By the instant petition, petitioner seeks to add the following authority to those described above: "from Orrville, Ohio, to points in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and points in Pennsylvania (except those on and south of a line beginning at the Ohio-Pennsylvania State Boundary line and extending along U.S. Highway 422 to Indiana, Pa., and those on and west of a line beginning at Indiana, Pa., and extending along U.S. Highway 119 to its intersection with the Pennsylvania-West Virginia State Boundary line) and Baltimore, Md., Wilmington, Del., and the District of Columbia, under a continuing contract or contracts with The J. M. Smucker Company, Orrville, Ohio." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before April 26, 1974.

No. MC 110098 (Sub-No. 53) (Notice of Petition To Eliminate a Vehicle Restriction), filed March 8, 1974. Petitioner: ZERO REFRIGERATED LINES, 1400 Ackerman Rd., P.O. Box 20380, San Antonio, Tex. 78220. Petitioner's representative: Donald L. Stern, Suite 530, Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Petitioner holds a motor *common carrier* certificate in No. MC 110098 (Sub-No. 53), issued April 11, 1968, authorizing transportation, over irregular routes, of *foods, food preparations, foodstuffs, candy, and confectionery products* (except in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from points in California, to points in Arizona, New Mexico, and Texas. By the instant petition, petitioner seeks to eliminate the vehicle restriction "in vehicles equipped with mechanical refrigeration." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 111839 (Notice of Filing of Petition To Eliminate a Service Restriction), filed March 8, 1974. Petitioner: BEE LINE EXPRESS, INC., Highway 75 North, P.O. Box 388, Albertville, Ala. 35950. Pettioner's representative: Drew L. Carraway and Elliot Bunce, 618 Perpetual Bldg. NW., Washington, D.C. 20004. Petitioner holds a motor *common carrier* certificate in No. MC 111839 issued June 24, 1963, authorizing transportation, over regular routes, of *general commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Chattanooga, Tenn., and Birmingham, Ala., serving the intermediate points of Albertville, Ala., and all intermediate points between Albertville, Ala., and Chattanooga, Tenn., with service at Albertville, Ala., restricted to the transportation of shipments moving from, to, or through Chattanooga, Tenn., and serving off-route points within three miles of the indicated portion of Alabama Highway 75: From Chattanooga, over U.S. Highway 11 to Trenton, Ga., thence over Georgia Highway 143 to the Alabama-Georgia State Boundary line, thence over Alabama Highway 75 via Albertville and Oneonta, Ala., to Birmingham, and return over the same route; (2) between Rainesville, Ala., and Scottsboro, Ala., serving all intermediate points: From Rainesville over Alabama Highway 35 to Scottsboro and return over the same route; and (3) between Scottsboro, Ala., and Chattanooga, Tenn., serving all intermediate points in Alabama on U.S. Highway 72 between Scottsboro and the Tennessee-Alabama State Boundary line, and the off-route point of Widows Creek, Ala.: From Scottsboro over U.S. Highway 72 to Chattanooga, and return over the same route. RESTRICTION: The service authorized herein is subject to the condition that the traffic moving to, from, or through Chattanooga may not be transported by said carrier to or from Birmingham. By the instant petition, petitioner seeks to eliminate the service restriction stated immediately above on operations between Chattanooga, Tenn., and Birmingham, Ala., to allow through operations between the two cities. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 114725 (Sub-No. 52) (Notice of Filing of Petition to Modify an Origin Point), filed March 3, 1974. Petitioner: WYNNE TRANSPORT SERVICE, INC., 2606 North 11th St., Omaha, Nebr. 68110. Petitioner's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Petitioner holds a motor *common carrier* certificate in No. MC 114725 (Sub-No. 52) issued February 1, 1974, authorizing transportation, over irregular routes, of, *fuel oil*, in bulk, in tank vehicles, from Falls City, Nebr., to Marshall, Mo. By the instant petition, petitioner seeks to delete Falls City, Nebr., as a point of origin and substitute in lieu thereof, points in Richardson County, Nebr. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 134145 (Sub-Nos. 1 and 19) (Notice of Filing of Petition to Modify Commodity Descriptions), filed March 7, 1974. Petitioner: NORTH STAR TRANSPORT, INC., Route #1, Thief River Falls, Minn. 56701. Petitioner's representative: Robert P. Sack (same address as petitioner). Petitioner holds motor *contract carrier* permits in No. MC 134145 (Sub-Nos. 1 and 19) issued July 19, 1973, and April 3, 1973, respectively, authorizing transportation, over irregular routes, of in Sub-No. 1, (1) (a) *snowmobiles, boats, motor bikes, and racing vehicles;* and (b) *parts and accessories* of the commodities in (a) above, from Roseau, Thief River Falls, Karlstad, and Minneapolis, Minn., and Afton, Wyo., to points in the United States (except Alaska and Hawaii); and (2) *materials, supplies, and equipment* used in the manufacture of the commodities described in (1) (a) and (b) above (except commodities in bulk), from points in California, Colorado, Connecticut, Idaho, Iowa, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin, to Roseau, Thief River Falls, Karlstad, and Minneapolis, Minn., and Afton, Wyo., under a continuing contract or contracts with Polaris Industries, Inc., of Roseau, Minn., and Arctic Enterprises, Inc., of Thief River Falls, Minn., and Arctic Metals Products, Inc., of Minneapolis, Minn.; and in Sub-No. 19, *materials, supplies, and equipment* used in the manufacture and sale of snowmobiles and motorbikes (except commodities in bulk), from points in Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Iowa, Kentucky, Louisiana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wyoming, to Clearbrook, Detroit Lakes, Karlstad, Minneapolis, Moorhead, Roseau, and Thief River Falls, Minn.,

under a continuing contract or contracts with Arctic Enterprises, Inc., of Thief River Falls, Minn., and Polaris Industries, Inc., of Roseau, Minn. By the instant petition, petitioner seeks to modify its commodity description in Sub-No. 1, 1(a) to read: "*Snowmobiles, boats, motor bikes, racing vehicles, and agriculture implements,*" and in (Sub-No. 19, to read: "*Materials, supplies, and equipment* used in the manufacture and sale of snowmobiles, motor bikes, and agriculture implements." Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before April 26, 1974.

No. MC 136408 (Notice of Filing of Petition To Add an Additional Contracting Shipper), filed March 14, 1974. Petitioner: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, Iowa 51102. Petitioner's representative: William J. Hanlon, 60 Park Place, Newark, N.J. 07102. Petitioner holds a motor *contract carrier*, permit in No. MC 136408 issued August 30, 1972, authorizing, as pertinent, transportation, over irregular routes, of *meats, meat products, and meat byproducts and dairy products*, as described in Sections A and B of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from Sioux City, Iowa, to New York, N.Y., under a continuing contract or contracts with Iowa Beef Packers, Inc., of Sioux City, Iowa (successor-in-interest to Sioux City Quality Packers, Inc.). By the instant petition, petitioner seeks to add Armour Food Co. as an additional contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before April 26, 1974.

Applications Under Sections 5 and 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

Motor Carriers of Property

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE.

No. MC 2202 (Sub-No. 459), filed February 6, 1974. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Akron, Ohio 44309. Applicant's representative: William O. Turney, 2001 Massachusetts Ave. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, live stock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) Between Monroe, La., and Shreveport, La., serving the intermediate points of West Monroe, Ruston, Homer, and Springhill, La.: From Monroe over Interstate Highway 20 to Ruston, thence over U.S. Highway 80 to Arcadia, thence over Louisiana Highway 9 to junction of U.S. Highway 79, thence over U.S. Highway 79 to Homer, thence over Louisiana Highway 2 to junction of Louisiana Highway 159, thence over Louisiana Highway 159 to junction of Louisiana Highway 157, thence over Louisiana Highway 157 to junction of Louisiana Highway 3, thence over Louisiana Highway 3 to Shreveport, restricted against the transportation of local traffic between Homer and Springhill, La.; (2) between Arcadia and Shreveport, La., serving intermediate points of Minden and Bossier City: From Arcadia over U.S. Highway 80 to Shreveport and return over the same route; (3) between the junction of U.S. Highway 80 and Louisiana Highway 7 to Springhill, La., serving no intermediate points: From the junction of U.S. Highway 80 and Louisiana Highway 7 over Louisiana Highway 7 to Springhill and return over the same route;

(4) Between Bernice, La. and Vidalia, La., serving all intermediate points between Bernice and Jonesboro, La., Winnfield, La., and all intermediate points between Packton, La., and Vidalia, La.: From Bernice over U.S. Highway 167 to Packton, La., thence over Louisiana Highway 50 (formerly Louisiana Highway 108) to junction of U.S. Highway 84, thence over U.S. Highway 84 to Ferriday, thence over U.S. Highway 65 to Vidalia and return over the same route; (5) between Trout and Alexandria, La., serving all intermediate points: From Trout over Louisiana Highway 8 (formerly Louisiana Highway 19) to Pollack, thence over U.S. Highway 165 to Alexandria and return over the same route; (6) between Pollack, La., and junction of U.S. Highways 165 and 84 serving no intermediate points and serving the junction of U.S. Highways 165 and 84 for the purpose of joinder only: From Pollack over U.S. Highway 65 to junction of U.S. Highway 84 and return over the same route; and (7) between Winnfield and Trout, La. serving no intermediate points: From Winnfield over U.S. Highway 84 to Trout and return over the same route.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. The purpose of this application is to convert the Certificates of Registration issued to Kavanaugh Motor Freight MC 121162 to Certificates of Public Convenience and Necessity. This is a matter directly related to the Section 5 purchase proceeding in MC-F-12129 published in the FR issue of February 13, 1974. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Washington, D.C.

No. MC 85850 (Sub-No. 9), filed December 26, 1973. Applicant: NEYLON FREIGHT LINES, INC., 541 South First Street, Lincoln, Nebr. 68508. Applicant's representative: Earl H. Scudder, Jr., 605 South 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, commodities which because of size or weight require the use of special equipment, and commodities of unusual value), between Lincoln, Nebr., and Sidney, Nebr., serving the junction of U.S. Highway 385 and Nebraska Highway 19 as an intermediate point, with service at Sidney restricted for purposes of joinder only: From Lincoln, Nebr., via U.S. Highway 6 to junction Interstate Highway 80, thence via Interstate Highway 80 to junction U.S. Highway 385, thence via U.S. Highway 385 to junction U.S. Highway 30, thence via U.S. Highway 30 over its junction with Nebraska Highway 19 to Sidney, Nebr. and return over the same route.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. The purpose of this application is to convert applicant's irregular route authority to regular route authority. This matter is directly related to the Section 5 purchase proceeding in MC-F-11852, published in the FR issue of July 25, 1973. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC-F-11774. (Amendment) (MERCHANTS TRUCK LINE, INC.—CONTROL—MISSISSIPPI FREIGHT LINES, INC.), published in the January 24, 1973, issue of the FEDERAL REGISTER, on page 2368. Prior notice to be modified to read: "MERCHANTS TRUCK LINE, INC.—CONTROL AND *MERGER*—MISSISSIPPI FREIGHT LINES. INC.)."

No. MC-F-12126. (Correction) (REDBANK TRANSPORT, INC.—PURCHASE—CARL KREBS), published in the February 13, 1974, issue of the FEDERAL REGISTER on page 5543. Prior publication should be corrected to show that DRAVO CORPORATION controls UNION MECHLING CORPORATION, a motor common and contract carrier, and that UNION MECHLING CORPORATION controls RIVER FORWARDERS, INC., a freight forwarder.

No. MC-F-12137. (Correction) (MILLER TRANSFER AND RIGGING CO.—PURCHASE—COMMODORE CARTAGE COMPANY), published in the February 27, 1974, issue of the FEDERAL REGISTER on page 7629. Prior notice to be corrected to read as follows: ". . . commodities requiring special equipment because of size or weight . . ."

No. MC-F-12143. Authority sought for purchase by MAR VAN HAULING & RIGGING, INC., Avenue B, P.O. Box 169, Watervliet, NY 12189, of a portion of the operating rights of FORT EDWARD EXPRESS CO., INC., Route 9 Saratoga

Rd., Fort Edward, NY 12828, and for acquisition by JAMES W. MARSHALL, AND ALVIN VAN DENBERG, both of Watervliet, NY 12189, of control of such rights through the purchase. Applicants' attorney: John J. Brady, Jr., 77 State St., Albany, NY 12207. Operating rights sought to be transferred: *Commodities* which because of size or weight require special equipment and special handling, as a *common carrier* over irregular routes, between points in Clinton, Essex, and Franklin Counties, N.Y., on the one hand, and, on the other, points in Franklin and Chittenden Counties, Vt. Vendee is authorized to operate under section 210a(a), pursuant to contract carrier permit in pending No. MC–136594 (Sub-No. 1). Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12150. (CORRECTION) (MOTOR CARGO—PURCHASE—WHOLESALE SERVICES, INC., DBA, R & R TRANSPORTATION COMPANY), published in the March 6, 1974, issue of the FEDERAL REGISTER on page 8696. Prior notice to be corrected to include: Applicants' attorney: Earl H. Scudder, Jr., P.O. Box 82028, Lincoln, NE 68501; vendee is authorized to operate as a common carrier in Nevada, and Utah. The phrase (over regular routes) should be deleted from prior description.

No. MC–F–12154, (DODDS TRUCK LINE, INC.—PURCHASE—CLINTON TRUCK LINES, INC.), published in the March 13, 1974, issue of the FEDERAL REGISTER on page 9729. Application filed March 13, 1974, for temporary authority under section 210a(b).

No. MC–F–12169. Authority sought for purchase by HOWARD HALL COMPANY, INC., P.O. Box 698, Birmingham, AL 35201, of the operating rights and property of FOY CHALKER AND A. C. CREEL, doing business as DOVE TRUCK LINE, P.O. Box 1484, Dothan, AL 36301, and for acquisition by HOWARD HALL, SR., also of Birmingham, AL 35201, of control of such rights and property through the purchase. Applicants' attorney: Maurice F. Bishop, 603 Frank Nelson Bldg., Birmingham, AL 35203. Operating rights sought to be transferred: *General commodities,* excepting among others, dangerous explosives, and household goods, as a *common carrier* over irregular routes, from Jacksonville, Fla., to Dothan, Ala.; *canned citrus fruits and juices, and canned tomatoes,* from Winter Haven, Fla., and points and places in Florida within 70 miles of Winter Haven to Dothan and points and places in Alabama within 125 miles of Dothan; *cottonseed and raw peanuts,* from points and places in Georgia within 75 miles of Dothan, Ala., to Dothan; *cottonseed meal, peanut meal, shelled peanuts, cottonseed hulls, cotton lintors, cottonseed oil, and peanut oil,* from Dothan, Ala., to Mobile, Ala., and points and places in Georgia within 125 miles of Dothan and points and places in Florida west of Jefferson County; *cotton, cotton tags, livestock, and fertilizer,* between points and places in Florida west of Jefferson County, Fla., points and places in Georgia within 125 miles of Dothan, Ala., and points and places in Alabama within 125 miles of Dothan, including Dothan and Mobile, Ala.; *shelled corn,* between Dothan, Ala., and points and places in Alabama within 50 miles of Dothan, on the one hand, and, on the other, points and places in Georgia within 50 miles of Dothan, from Dothan, Ala., and points and places in Alabama and Georgia within 50 miles of Dothan, to points and places in Florida; *table sauces, mayonnaise, salad dressing, sandwich spread, French dressing, chili sauce, prune juice, and beverage syrup* (except in bulk, in tank vehicles), from Brundidge, Ala., to certain specified points in Florida; *canned non-alcoholic beverages,* other than citrus, from points in that part of Florida east of the Apalachicola River, to certain specified points in Alabama; *foodstuffs,* except in bulk, from Brundidge, Ala., to certain specified points in Florida, with restriction; *fruit and vegetable crystals,* from Lake Wales, Fla., to certain specified points in Alabama. Vendee is authorized to operate as a *common carrier* in Alabama, Florida, Georgia, North Carolina, and South Carolina. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12170. Authority sought for purchase by THE SANTA Fe TRAIL TRANSPORTATION COMPANY, 433 E. Waterman St., P.O. Box 56, Wichita, KS 67202, of a portion of the operating rights and property of THOMPSON BROS., INC., 21001 Cabot Blvd., Hayward, CA 94504, and for acquisition by SANTA Fe INDUSTRIES, INC., 80 E. Jackson Blvd., Chicago, IL 60604, of control of such rights and property through the purchase. Applicant's attorneys: Phillip Robinson, P.O. Box 2207, Austin, TX 78767, and Bertram S. Silver, 140 Montgomery St., San Francisco, CA 94104. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–6275 (Sub-No. 6), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of California. Vendee is authorized to operate as a *common carrier* in Nebraska, Oklahoma, Kansas, Missouri, Colorado, New Mexico, Texas, California, Arizona, and Arkansas. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12171. Authority sought for purchase by DON WARD, INC., P.O. Box 1488, Durango, CO 80216, of the operating rights of LESLEY ESTES, doing business as ESTES TRUCKING CO., P.O. Box 551, Rifle, CO 81650, and for acquisition by DON WARD, also of Denver, CO 80216, of control of such rights through the purchase. Applicants' attorney: Peter J. Crouse, 1700 Western Federal Bldg., Denver, CO 80202. Operating right sought to be transferred: *General commodities,* with exceptions, as a *common carrier* over irregular routes, between points in Garfield and Pitkin Counties, Colo., between points in Garfield and Pitkin Counties, Colo., on the one hand, and, on the other, points in Colorado, with restriction, between Rifle, Colo., on the one hand, and, on the other, points within 20 miles of Rifle except those on U.S. Highways 6 and 24; *oil shale,* in bulk, from points in Garfield and Rio Blanco Counties, Colo., to points in Albany County, Wyo. Vendee is authorized to operate as a *common carrier* in Arizona, California, Colorado, Iowa, Kansas, Montana, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, Utah, and Wyoming. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12172. Authority sought for purchase by OLIVER TRUCKING COMPANY, INC., P.O. Box 53, Winchester, KY 40319, of a portion of the operating rights of HARRISON - SHIELDS TRANSPORTATION LINES, INC., P.O. Box 445, Meadow Lands, PA 15347, and for acquisition by RALPH OLIVER, also of Winchester, KY 40391, of control of such rights through the purchase. Applicants' attorneys: Louis J. Amato, 1301 Ambassador Bldg., St. Louis, MO 63101 and Maxwell A. Howell, 1100 Investment Bldg., 1511 K St. NW., Washington, DC 20005. Operating rights sought to be transferred: *Such merchandise* as is dealt in by mail order houses and department stores, the business of which is the sale of general commodities, as a *common carrier* over irregular routes, between Coraopolis, McKeesport, Neville Island, and Pittsburgh, Pa., on the one hand, and, on the other, Williamson, W. Va., and Ashland, Ky. Vendee is authorized to operate as a *common carrier* in Kentucky, Pennsylvania, West Virginia, Tennessee, North Carolina, Georgia, Alabama, Mississippi, Illinois, Indiana, Michigan, Missouri, Ohio, South Carolina, Virginia, Wisconsin, Arkansas, Delaware, Florida, Iowa, Louisiana, Maryland, Minnesota, New Jersey, New York, Connecticut, Maine, Massachusetts, New Hampshire, Oklahoma, Rhode Island, Texas, Vermont, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12173. Authority sought for purchase by CHEROKEE HAULING & RIGGING, INC., 540 Merritt Ave., Nashville, TN 37203, of the operating rights of VIRGINIA HAULING COMPANY, 1205 8th Ave., So. Nashville, TN 37203, and for acquisition by M. BRYAN STANLEY, also of Nashville, TN 37203, of control of such rights through the purchase. Applicants' attorney: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Operating rights sought to be transferred: *Lime,* as a *common carrier,* over irregular routes, from points in a defined area of Virginia, to points in a defined area of Maryland, and Pennsylvania, and Wilmington, Del., Washington, D.C., and points within ten miles of Washington, D.C., from Glen Allen, Va., to Washington, D.C., and points in a defined area of

Maryland, Pennsylvania, and Wilmington, Del., and points in Maryland within ten miles of Washington, D.C., from Richmond, and Boulevard, Va., to points in a defined area of Maryland, and Washington, D.C., and points within ten miles of Washington, D.C., from points in Mathews and Gloucester Counties, Va., to Washington, D.C., and Baltimore, Md., from Hagerstown, Md., and Martinsburg, W. Va., to points in a defined area of Virginia; *fertilizer* and *fertilizer materials*, from Baltimore, Md., to Richmond, Va.; (1) *commodities* the transportation of which because of size or weight requires the use of special equipment, (2) *self-propelled articles*, each weighting 15,000 pounds, and (3) *building materials*, between points in Virginia, except those points located in Northumberland, Lancaster, Westmoreland, and Richmond Counties, Va., and in that part of King George County, Va., on and east of U.S. Highway 301, on the one hand, and, on the other, points in the District of Columbia, and points in North Carolina, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York;

Farm products, in truckload lots, between points in Virginia, excepting those located in Northumberland, Lancaster, Westmoreland and Richmond Counties, Va., and in that part of King George County, Va., on the east of U.S. Highway 301, on the one hand, and, on the other Washington, D.C., and New York, N.Y.; *wooden pallets*, set up or knocked down, from Williamsburg, Va., to points in Delaware, Maryland, New Jersey, and Pennsylvania, and those on Long Island, N.Y., and New York, N.Y., and the District of Columbia; *wooden pallets* and *lumber*, except plywood and veneer, from points in Virginia to points in Massachusets, Rhode Island, Connecticut, and Ohio (except from Chase City and Keysville, Va., to points in Ohio); *wooden pallets*, from Lorne and Tylers, Va., and from the plant site of Thornburg Manufacturing Company, Inc., near Woodford, Va., to points in North Carolina, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, and the District of Columbia; *iron and steel articles*, as described in Appendix V to the report *Description in Motor Carrier Certificates*, 61 M.C.C. 209, on flatbed trailers, from the sites of plants or warehouses of the United States Steel Corporation located at Clairton, Duquesne, Braddock, Homestead, McKees Rocks, West Mifflin, and Vandergrift, Pa., and from the sites of plants or warehouses of Jones and Laughlin Steel Company located at Aliquippa and Pittsburgh, Pa., to points in Virginia (except points in King George, Fairfax, Loudoun, Clarke, Fauquier, Prince Williams, Frederick and Stafford Counties;

Wire bound box material, wooden pallets, and *pallet parts*, from Richmond, Va., to Greensburg, Creighton, and Ford City, Pa.; *pallets, pallet boxes, skids* and *platforms*, from points in a defined area of Virginia, to points in Delaware, New Jersey, New York, and a portion of West Virginia and Pennsylvania; *salt*, in bags, from Fairport Harbor, Ohio to points in a defined area of Virginia; *salt* and *salt mixtures*, from Cleveland, Akron, Rittman, Fairport, and Fairport Harbor, Ohio, to points in a defined area of Virginia; *composition building board*, from the plant site and storage facilities of Southern Johns-Manville Corporation at Jarratt, Va., to points in Connecticut, Massachusetts, and Rhode Island; *steel articles*, from the sites of the plants, warehouses, and storage facilities of Commercial Shearing and Stamping Company, and of Syro Steel Company at or near Youngstown, Ohio, to points in Maryland, Virginia, and the District of Columbia; *silica sand* (except in bulk), from the plant site of Ottawa Silica Company at North Stonington, Connecticut, to the plant site of Southern Johns-Manville Corporation at Jarratt, Va.; *wood fiberboard*, from the plant site and storage facilities of Evans Products Company at or near Doswell, Va., to points in North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Ohio, and the District of Columbia. Vendee is authorized to operate as a common carrier in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority unler section 210a(b).

Notice is hereby given that Fort Dodge, Des Moines & Southern Railway Company, 400 West Madison Street, Chicago, Illinois 60606, by its attorney, Christopher A. Mills, has filed an application with the Interstate Commerce Commission pursuant to section 5(2) of the Interstate Commerce Act for authority to purchase all of the assets of Des Moines Western Railway Company. The application has been docketed as Finance Docket No. 27575. The assets to be purchased include 4.83 miles of main, yard and side tracks and a freight house, all located in the City of Des Moines, Polk County, Iowa. In the opinion of the applicant, Commission approval of the proposed transaction will not constitute a major Federal action having a significant effect upon the quality of the human environment. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat'l Environmental Policy Act of 1969*, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (b) (1)–(5), 340 I.C.C. 431, 461. The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission on or before April 26, 1974.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-7102 Filed 3-26-74;8:45 am]

[Notice No. 50]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before April 16, 1974. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–74947. By order of March 22, 1974, the Motor Carrier Board approved the transfer to Norbert R. Peters, doing business as Norbs Trucking, Delmont, S. Dak., Certificate No. MC–102570 issued October 30, 1967, to Lester Ebright, Delmont, S. Dak., authorizing the transportation of livestock between Delmont, S. Dak., on the one hand, and, on the other, Sioux City, Iowa; and building materials, livestock, poultry feed, and fertilizer from Sioux City, Iowa, to Delmont, S. Dak. Mr. Don A. Bierle, Attorney at Law, 322 Walnut Street, Box 38, Yankton, S. Dak. 57078.

No. MC–FC–74958. By order of March 21, 1974, the Motor Carrier Board approved the transfer to A & W Service, Inc., doing business as Chandley Cartage Co., Henderson, Ky., of the operating rights in Certificates Nos. MC–1035 and MC–1035 (Sub-No. 3) issued September 17, 1943, and May 10, 1973, respectively, to John W. Chandley, doing business as Chandley Cartage Co., Henderson, Ky., authorizing the transportation of general commodities, with exceptions, between Henderson, Ky., and Evansville, Ind., serving intermediate or off-route points in Henderson, McLean, and Webster Counties, Ky (except Geneva, Henderson, Providence, and Sebree, Ky., and points in the commercial zones thereof), and household goods as defined by the Commission, between Henderson, Ky., on the one hand, and, on the other, Evansville, Ind. William M. Deep, 140 North Main Street, Henderson, Ky. 42420, attorney for applicants.

No. MC–FC–75010. By order entered March 22, 1974, the Motor Carrier Board approved the transfer to Schoelman Lines of Texas, Inc., Houston, Tex., of the operating rights set forth in Permits Nos. MC–134455 and MC–134455 (Sub-No. 2), issued November 16, 1971, as corrected February 28, 1972, and July 11, 1973, respectively, to Schoelman Lines, Inc.,

Houston, Tex., authorizing the transportation of dry animal and poultry feeds and feed ingredients (except lime, urea, and salt), between points in Texas, on the one hand, and, on the other, points in Arkansas, Louisiana, and Mississippi, and Memphis, and Tiptonville, Tenn., under a continuing contract with Hathan Segal & Company, Incorporated; and defluorinated phosphate feed supplements, from Houston, Tex., to points in Mississippi, under a continuing contract with Olin Corporation. E. H. Thornton, Jr., 3610 One Shell Plaza, Houston, Tex. 77002, attorney for applicants.

[SEAL] ROBERT S. OSWALD,
Secretary.

[FR Doc.74-7101 Filed 3-26-74;8:45 am]

[Rev. S.O. 994; Rev. I.C.C. Order 76; Amdt.]

READING CO.

Rerouting Traffic

MARCH 22, 1974.

Upon further consideration of I.C.C. Order No. 76 (Reading Company) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 76 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 15, 1974, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., March 15, 1974, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 13, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-7097 Filed 3-26-74;8:45 am]

[Ex Parte No. 293 (Sub-No. 1)]

NORTHEASTERN RAILROAD INVESTIGATION

Review of the Secretary of Transportation's Rail Service Report; Public Hearings; Correction

MARCH 22, 1974.

In the above-captioned matter published at 39 FR 9508, March 11, 1974, the phone number on line 19 was inadvertently transposed and should be 716/842-2008.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-7100 Filed 3-26-74;8:45 am]

[Service Order 1179]

TEXAS AND PACIFIC RAILWAY CO.

Order To Operate Trains of National Railroad Passenger Corporation (Amtrak)

At a Session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 21st day of March 1974.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between St. Louis, Missouri, and Laredo, Texas; that the operation of these trains requires the use of the employees, tracks and other facilities of The Texas and Pacific Railway Company (T&P) between a connection with the Missouri Pacific Railroad Company (MP) at Texarkana, Arkansas, and a connection with The Atchison, Topeka, and Sant Fe Railway Company (ATSF) at Fort Worth, Texas; that the T&P has refused to permit the continued operation of the aforementioned Amtrak trains over its tracks between Texarkana, Arkansas, and Fort Worth, Texas, pending completion of an operating agreement with Amtrak; that the failure to operate these trains over their entire routes would force the public to find alternative methods of transportation requiring greater expenditures of energy, thus creating an emergency and that operation of the aforementioned Amtrak trains over tracks of the T&P between Texarkana, Arkansas, and Fort Worth, Texas is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1179 **The Texas and Pacific Railway Company ordered to operate trains of National Railroad Passenger Corporation (Amtrak).**

(a) The Texas and Pacific Railway Company (T&P) be, and it is hereby, ordered, to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with the Missouri Pacific Railroad Company (MP) at Texarkana, Arkansas, and a connection with The Atchison, Topeka and Santa Fe Railway Co. (ATSF) at Fort Worth, Texas including the use of any of its employees, tracks and other facilities as may be required.

(b) *It is further ordered,* That such operations of Amtrak trains by or over the facilities of T&P shall be continued until such time as they may be conducted under the terms of an agreement between Amtrak and the T&P which agreement shall be retroactive to the first day of operation of such trains. The aforementioned agreement may be voluntarily reached between the carriers or, if unable to so agree, shall be determined by the Commission after hearing.

(c) *It is further ordered,* That the relief granted herein is subject to, and without prejudice to the rights of the parties in, Civil Action 74-CV-111-4-4, *National Railroad Passenger Corporation v. Missouri Pacific Railroad Company, et al.,* before the United States District Court for the Western District of Missouri and any appeals from orders of said Court.

(d) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(e) *Effective date.* This order shall become effective at 12:01 a.m., March 22, 1974.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

(45 U.S.C. (562).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the FEDERAL REGISTER.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-7099 Filed 3-26-74;8:45 am]

COST OF LIVING COUNCIL

HEALTH INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Health Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on April 3, 1974. The meeting will be open to the public on a first-come, first-served basis at 10 a.m., in Conference Room 8009, 2025 M Street, NW., Washington, D.C.

The agenda will consist of a discussion of the health industry wage cases currently pending before the Cost of Living Council.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C., on March 25, 1974.

HENRY H. PERRITT, JR.,
Executive Secretary,
Cost of Living Council.

[FR Doc.74-7260 filed 3-26-74;11:25 am]

CUMULATIVE LIST OF PARTS AFFECTED—MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

3 CFR

PROCLAMATIONS:

3655 (superseded by 4276) ---- 10878
4273 ---- 7921
4274 ---- 8315
4275 ---- 10413
4276 ---- 10877
4277 ---- 11169
4278 ---- 11171

EXECUTIVE ORDERS:

July 2, 1910 (revoked by PLO 5416) ---- 8326
11697 (revoked by 11773) ---- 10881
11709 (revoked by 11773) ---- 10881
11771 ---- 10415
11772 ---- 10879
11773 ---- 10881

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

MEMORANDUMS:

March 7, 1974 ---- 10113
March 1, 1974 ---- 10417

4 CFR

52 ---- 11273
406 ---- 10115

PROPOSED RULES:

408 ---- 8171

5 CFR

213 ---- 8607, 8903, 9425, 9535, 9649, 10115, 10233, 10419, 11069, 11247
539 ---- 10419
550 ---- 10419

PROPOSED RULES:

900 ---- 11304

6 CFR

150 ---- 8162, 8163, 8328, 8608, 8884, 8921, 8922, 9185, 9444, 9535, 9768, 9967, 9969, 10233, 10420, 10910, 11069, 11070, 11274, 11376
152 ---- 8328, 8329, 8331, 8921, 8922, 9185, 9444, 9535, 9967–9969, 10233, 10420, 10421, 10910, 11070, 11072
Rulings ---- 7940, 10152, 11074

PROPOSED RULES:

150 ---- 9987

7 CFR

6 ---- 11074
52 ---- 8903
210 ---- 11247
220 ---- 11249
225 ---- 11250
246 ---- 9445, 11252
250 ---- 8608, 11252
270 ---- 11252
295 ---- 11253
301 ---- 9653–9656
354 ---- 7923
729 ---- 10883
730 ---- 9186
775 ---- 9446
877 ---- 10421
907 ---- 7924, 9186, 9971, 11074
908 ---- 9971, 11075
910 ---- 8153, 9185, 9972, 10884
920 ---- 11253
929 ---- 8317
966 ---- 10553
980 ---- 8911
991 ---- 10425
1013 ---- 8609
1030 ---- 10426
1079 ---- 10553
1096 ---- 11075
1129 ---- 10554
1205 ---- 11253
1421 ---- 11076
1434 ---- 9656
1472 ---- 9446
1822 ---- 9537
1874 ---- 10554

PROPOSED RULES:

68 ---- 10911
210 ---- 10914, 11296
220 ---- 10914
225 ---- 11296
728 ---- 8334
729 ---- 8165
795 ---- 7943
932 ---- 10437
966 ---- 8937
1007 ---- 8451, 8938
1011 ---- 11088
1030 ---- 8202, 8938, 9198
1032 ---- 8202, 8983, 9837
1046 ---- 8202
1049 ---- 8202
1050 ---- 8202, 8938, 9837
1060 ---- 8938, 9012
1061 ---- 8938, 9012
1062 ---- 8202, 9837
1063 ---- 8938, 9012
1064 ---- 8938, 9012
1068 ---- 8938, 9012
1069 ---- 9012
1070 ---- 9012
1070 ---- 9012
1071 ---- 8451
1073 ---- 8451
1076 ---- 8938, 9012
1078 ---- 8938, 9012
1079 ---- 8165, 8938, 9012
1090 ---- 8451, 8938
1094 ---- 8451
1096 ---- 8451
1097 ---- 8451, 8938
1098 ---- 8451, 8938, 10593
1099 ---- 8202
1102 ---- 8451
1104 ---- 8712, 8938
1106 ---- 8712, 8938
1108 ---- 8451, 8938
1120 ---- 8712
1121 ---- 11275
1126 ---- 8712, 11275
1127 ---- 8712, 11275
1128 ---- 8712, 11275
1129 ---- 8712, 11275
1130 ---- 8712, 11275
1126 ---- 8712
1127 ---- 8712
1128 ---- 8712
1129 ---- 8712
1130 ---- 8712
1131 ---- 8712
1132 ---- 8712
1138 ---- 8712
1475 ---- 8334

8 CFR

212 ---- 10884
238 ---- 10885
264 ---- 10885
299 ---- 10885
316a ---- 10885

PROPOSED RULES:

103 ---- 10593
235 ---- 8924, 9544
242 ---- 10436
299 ---- 8924, 9544

9 CFR

4 ---- 11173
56 ---- 10885
73 ---- 10236, 11254
76 ---- 9819
78 ---- 8153
82 ---- 8154
94 ---- 8617, 11176
97 ---- 10115
201 ---- 8913
381 ---- 8154

PROPOSED RULES:

92 ---- 11295
94 ---- 8619
113 ---- 9983
160 ---- 8938
161 ---- 8938
318 ---- 10914
319 ---- 10598
381 ---- 10914

10 CFR

9 ---- 8162
14 ---- 9836
31 ---- 10164
32 ---- 10164
50 ---- 10554
115 ---- 10554
202 ---- 10153
211 ---- 7925, 10156, 10236
212 ---- 10434
Rulings ---- 10434

PROPOSED RULES:

210 ---- 8354
211 ---- 8354, 8633, 11203–11205
212 ---- 8354, 10454, 11205, 11314

12 CFR

207 ---- 9425
221 ---- 9425
225 ---- 8318, 10236, 11254
265 ---- 10236
308 ---- 8913
309 ---- 8913
511 ---- 11176
523 ---- 9929, 11080
541 ---- 9427
545 ---- 9427, 9819
546 ---- 9142
563 ---- 9142

12 CFR—Continued Page

563b 9142
563c 9142

PROPOSED RULES:

210 9677
340 10278
505 11199
526 9677
544 11199
545 11199
563 11201, 11310
570 11201
571 11201
702 9992

13 CFR

121 9538, 11256
309 7926

PROPOSED RULES:

107 10607
121 11121

14 CFR

39 7926, 7927, 9649, 9650, 9819, 10426, 11083, 11084
71 7927, 7928, 8313, 9173, 9430, 9538, 9539, 9650, 9820, 9821, 9929, 10115–10117, 10427, 10428, 11084, 11085, 11177, 11256–11258
73 8609, 9930, 11258
75 10117
95 11086
97 8609, 9821, 10428
103 10117, 11087
221 8319, 9431
288 9822, 10886
298 9173
372a 10886

PROPOSED RULES:

Ch. I 11193
1 11301
39 11195
71 8176, 8350, 8630–8632, 9199, 9456, 9544, 9671, 9837–9838, 9986, 9987, 10161, 10438, 11096–11099, 11302
73 7949, 8176, 8631
75 10162
91 11301
105 8632
121 9456, 9671
212 10599
250 8171
372a 10915

15 CFR

370 10557
371 10557
377 10557
379 10558
386 10559
399 10559

PROPOSED RULES:

921 8924
922 10255

16 CFR

1 9174
2 10890
4 10890
13 7928, 9174, 9823–9825, 10237, 11177

PROPOSED RULES:

303 10448
435 9201, 9678

17 CFR Page

210 10118
230 8914
231 10237, 10891
239 10238
241 10237
249 10118
270 8320, 8915, 10578
271 8916

PROPOSED RULES:

1 9984
231 8353, 10278
240 10604
241 8353
249 10607
270 8935, 8936, 9678, 11312
275 9678

18 CFR

2 7928, 8332
101 8332
104 8332
141 8332, 8916, 10429, 10895
154 7928
157 8332, 10896
201 7928, 8332, 8917, 9651
204 8332
260 8332, 8917

PROPOSED RULES:

2 11310
154 11310
157 11310

19 CFR

1 9828, 10896
4 10429, 10897
6 10238, 10429
10 10897
151 9931

PROPOSED RULES:

1 9454
6 10911
19 10436
201 9454
416 8155

20 CFR

422 10238
702 10559

PROPOSED RULES:

405 8166, 10260

21 CFR

1 8610, 9931
2 9184, 9431, 9657
8 9539, 9657
9 9828
10 9828
26 8157
27 8322, 9658
36 9828
50 10429
90 10123
121 9431, 9540, 9658, 9828, 9829, 9931, 9932
128a 9828
128b 10123
130 9184, 9750, 9828
131 9540
132 9829
133 9829
135 9541
135a 9541, 9932
135b 9933

21 CFR—Continued Page

135c 9933–9936
135e 9184, 9431
135g 9184
141 9829, 9936
141a 9936
141c 9829
146 9750
146a 9937
146b 9829
148i 9829
148p 9829
148w 9827
149b 9937
149y 9829
150d 9829
167 8610, 9829
174 9185
610 9659, 9660
630 9660
640 9661
650 9660
700 10054
701 10056
710 10059
720 10060
730 10062
1220 9945
1308 10580

PROPOSED RULES:

1 8620, 8621, 11298
27 11094
51 9992
53 11095
121 11299
135 11299
146 9199
164 9199
610 11301
620 11301
630 10158

22 CFR

PROPOSED RULES:

51 8165

23 CFR

2 10430
15 10430
16 10430
25 10430
305 10430
424 10430
642 10430
645 10430
650 10430
652 10581
660 10430
713 8611, 10430
720 8611, 9431, 10430

PROPOSED RULES:

476 9522

24 CFR

81 11179
201 9919, 11080
203 9919
232 9431
236 10559
1270 10964
1710 9431, 11181
1914 7932, 9174–9176, 9832–9835, 9920, 11181–11183, 11259
1915 7933, 9921, 11183, 11259
2200 9541, 9651
2201 9541

24 CFR—Continued Page

PROPOSED RULES:

390 ... 8629
470 ... 9985
1278 ... 10262

25 CFR

503 ... 10123

PROPOSED RULES:

162 ... 9197
221 ... 9982, 10437

26 CFR

1 ... 9945, 9946, 11080
12 ... 9947
31 ... 9946
172 ... 9949
301 ... 9946, 9949
601 ... 8917

PROPOSED RULES:

198 ... 9982

27 CFR

72 ... 9953

PROPOSED RULES:

18 ... 9974

28 CFR

0 ... 10430, 10581

29 CFR

70 ... 10242
94 ... 10374
95 ... 10377
96 ... 10389
98 ... 10395
1430 ... 9433
1601 ... 10123
1606 ... 10123
1910 ... 9957
1999 ... 9959
1915 ... 9435
1952 ... 8611, 8613, 9436

PROPOSED RULES:

601 ... 7946
613 ... 7946
657 ... 7946
673 ... 7946
675 ... 7946
678 ... 7946
690 ... 7946
699 ... 7946
720 ... 7946
727 ... 7946
728 ... 7946
729 ... 7946
1910 ... 9838, 9985
1926 ... 10216
1928 ... 8633
2200 ... 9202

30 CFR

57 ... 9652

PROPOSED RULES:

75 ... 8618
77 ... 8618
260 ... 10158

31 CFR

9 ... 10898
51 ... 8323

32 CFR Page

641 ... 10124
752 ... 9962
809c ... 10560
855 ... 10124

32A CFR

Ch. X:
OI Reg. 1 ... 10242

33 CFR

1 ... 9176, 10130
3 ... 8613
26 ... 9176
40 ... 8614
117 ... 9662
127 ... 9662, 11258
177 ... 10130
183 ... 10899
199 ... 10899
401 ... 10899

PROPOSED RULES:

117 ... 7948, 9454, 11095
159 ... 8038
160 ... 7948
209 ... 7942

34 CFR

232 ... 10132
281 ... 8615

36 CFR

7 ... 9963, 9964
221 ... 9663
295 ... 10430

PROPOSED RULES:

7 ... 7942, 9982, 10990

38 CFR

1 ... 7929
3 ... 9541
17 ... 9542

PROPOSED RULES:

3 ... 9559, 11202
17 ... 10918

39 CFR

132 ... 8616
164 ... 10132, 10566

PROPOSED RULES:

123 ... 9203
777 ... 10449

40 CFR

4 ... 10362
14 ... 9664
35 ... 9439
52 ... 8617, 9176, 9665–9667, 10582
60 ... 9307
104 ... 8325
180 ... 7929, 9177, 9439, 9964, 9965, 11080, 11268
203 ... 7930
406 ... 10512
407 ... 10862
409 ... 10522
415 ... 9612

PROPOSED RULES:

15 ... 11099
51 ... 9672
52 ... 8175, 8351, 10273, 10277, 10438, 10917, 11102
79 ... 8929
85 ... 10601, 11103

40 CFR—Continued Page

PROPOSED RULES—Continued

120 ... 8353
129 ... 10603
170 ... 9457
171 ... 11305
172 ... 11306
180 ... 10604
202 ... 9550
210 ... 9200
406 ... 10519
407 ... 10869
408 ... 7968
409 ... 10527
415 ... 9636
420 ... 11108
423 ... 8294, 9551
431 ... 7968

41 CFR

1–16 ... 11268
3–1 ... 11081
3–4 ... 9439
3–26 ... 11081
5A–2 ... 9178
1–9 ... 7925
5A–76 ... 8918
6–1 ... 8158
6–60 ... 8158
7–1 ... 8160
7–4 ... 8160
9–1 ... 10135
9–3 ... 9830
9–4 ... 10135
101–32 ... 11081
114–26 ... 9668

42 CFR

50 ... 9178, 10431
101 ... 10204

43 CFR

4 ... 7931

PUBLIC LAND ORDERS:

5416 ... 8326
5417 ... 10138

PROPOSED RULES:

3300 ... 11088
3500 ... 10437

45 CFR

60 ... 9440
103 ... 10566
174 ... 10566
201 ... 8326
205 ... 9178, 9512, 10432
234 ... 8918
248 ... 9512, 10253
249 ... 8918
250 ... 7930, 8918
401 ... 7931
1062 ... 8856
1068 ... 10253

PROPOSED RULES:

101 ... 9546
127 ... 10256
132 ... 8334
133 ... 8927
149 ... 7946
155 ... 9840
158 ... 8341
176 ... 8624
185 ... 9992
186 ... 9842
190 ... 9995
1211 ... 9547

46 CFR — Page

26 — 8918
33 — 10138
35 — 10139
54 — 9178
75 — 10139
78 — 10139
94 — 10139
97 — 10139
137 — 10432
160 — 9668, 11273
161 — 10139
167 — 10139
180 — 10140
185 — 10140
192 — 10140
196 — 10140
221 — 10572
308 — 9669
542 — 9542

PROPOSED RULES:

151 — 9445
160 — 10160
221 — 9544
381 — 9984, 11089
502 — 11117
526 — 10163

47 CFR

0 — 10432, 10574
1 — 8617, 10574, 10909
2 — 8617, 10140, 10144, 10909
73 — 9442, 10432, 10433, 10574, 10576, 11081, 11082
74 — 10576
76 — 9443
81 — 11082
83 — 10140, 11082
87 — 10909, 11082
91 — 10144
97 — 9443

PROPOSED RULES:

2 — 8932, 9462, 10448, 11109, 11196
21 — 8932
61 — 9464

47 CFR—Continued — Page

PROPOSED RULES—Continued

73 — 8953, 9466, 9551–9554, 9675–9677, 9987, 9989, 9991, 11111, 11112, 11309
76 — 9467, 11117
81 — 8932
83 — 9462, 10448
89 — 11109
91 — 11109
93 — 11109

49 CFR

1 — 8919, 10585
171 — 10910
174 — 10910
175 — 10910
177 — 10910
178 — 10910
253 — 9179
254 — 8919, 9966
310 — 9181
571 — 10586, 10588
1000 — 8326
1003 — 9830
1030 — 9831
1033 — 8161, 8327, 8920, 9181, 9182, 9542, 9966, 10145, 10590, 10591, 11191
1043 — 10254
1048 — 9831
1056 — 9830, 11191
1060 — 8327
1061 — 11191
1084 — 10254
1085 — 8921
1131 — 11192
1341 — 7925

PROPOSED RULES:

172 — 7950, 9457
173 — 7950, 9457
177 — 7950, 9457
178 — 7950, 9457
179 — 7950, 9457
215 — 8176
230 — 10267
231 — 9457

49 CFR—Continued — Page

PROPOSED RULES—Continued

390 — 9545
391 — 9545
392 — 9545
393 — 9545
394 — 9545
395 — 9545
396 — 9545
397 — 9545
571 — 7959–7966, 8176, 8928, 10162, 10268, 10271, 10273
1057 — 9554
1201 — 9204, 9469
1202 — 9204, 9469
1203 — 9204, 9469
1204 — 9204, 9469
1205 — 9204, 9469
1206 — 9204, 9469
1207 — 9204, 9469
1208 — 9204, 9469
1209 — 9204, 9469
1210 — 9204, 9469
1300 — 9205, 10164
1303 — 9205, 10164
1304 — 9205, 10164
1306 — 9205, 10164
1307 — 9205, 10164
1308 — 9205, 10164
1309 — 9205, 10164

50 CFR

28 — 9543, 9669, 9966, 10433
33 — 8327, 9670, 9832, 9966, 10591
217 — 10146
218 — 10147
219 — 10149
220 — 10149
221 — 10151
222 — 10151
240 — 9183, 10592

PROPOSED RULES:

20 — 10158
253 — 10437
280 — 11089

LIST OF FEDERAL REGISTER PAGES AND DATES—MARCH:

Pages	*Date*
7915–8146	Mar. 1
8147–8307	4
8309–8598	5
8599–8896	6
8897–9166	7
9167–9418	8
9419–9528	Mar. 11
9529–9636	12
9641–9811	13
9813–9911	14
9913–10106	15
10107–10223	18
10225–10403	19
10405–10546	20
10547–10870	21
10871–11062	22
11063–11161	25
11163–11238	26
11239–11405	27

federal register

WEDNESDAY, MARCH 27, 1974
WASHINGTON, D.C.
Volume 39 ■ Number 60
PART II

COST OF LIVING COUNCIL

■

PHASE IV HEALTH CARE REGULATIONS

Miscellaneous Amendments

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

Correcting and Supplemental Amendments to the Phase IV Health Care Regulations

The purpose of these amendments is to correct typographical and other errors and to clarify and supplement certain of the Phase IV health care regulations.

On November 5, 1973, the Council issued a notice of proposed rulemaking, 38 FR 30850 (November 7, 1973) setting out proposed Phase IV health care regulations for comment by the public. On January 23, 1974, at 39 FR 2670, the Council published the health care regulations in final form, with substantial changes from the proposed regulations as a result of extensive public participation in the rulemaking. On March 6, 1974, the Council issued for public comment certain proposed health care forms to be used for reports required by the regulations, and indicated at that time that additional clarifying and supplemental amendments to the regulations would be published in the near future. The proposed forms were published at 39 FR 9768 (March 13, 1974). These amendments include certain changes which the Council is making as a result of the development of the proposed forms (including frequent consultation with interested persons in the health care sector), as well as clarifying changes resulting in large part from public response to the regulations.

In order that the public may have a complete set of Phase IV health care regulations, with the changes incorporated in the text, Subpart R of Part 150 is being republished at this time. The more significant changes are indicated below for each category of covered health care provider: Acute care hospitals (§§ 150.701 through 150.722), medical practitioners and medical laboratories (§§ 150.730 through 150.745), Health Maintenance Organizations and Health Maintenance Organization providers of health care (§§ 150.748 through 150.764), and long term care institutions (§§ 150.769 through 150.788). In addition, various other clarifying and conforming changes have been made in Subparts D, M, and O of Part 150, and Part 155, as indicated below.

Miscellaneous Provisions

Section 150.57 of Subpart O has been substantially amended to provide greater clarity. Paragraph (a) contains the list of exempt providers, to which inhalation therapists have been added. The exemption for rehabilitation centers has been clarified to apply only to rehabilitation outpatient centers. A general classification has been added for residential shelter or child care institutions not included within the definition of long term care institutions.

Paragraph (b) excepts from the exemption provisions most of the categories of providers if they are owned or operated by an acute care hospital, long term care institution, Health Maintenance Organization or HMO provider of health care services, and clinics and dispensaries, if they are owned or operated by a medical practitioner.

Paragraph (c) has been added to § 150.57 to clarify that the exemption provided by this section is effective during the fiscal year ending on or after January 1, 1974, and all subsequent fiscal years.

Section 150.415 has been amended in several respects. The introductory language in both paragraphs (a) and (b) has been revised to make clear that "each health insurer is authorized and expected" to monitor and report violations by health care providers. Paragraph (b) has been revised in several minor respects to clarify the intent of the section. Previously this paragraph provided that claims selected for review need not include claims under all coverages. As revised, insurers may exclude from their review those coverages which represent an insignificant portion of that insurer's premium volume. However, in its semi-annual report (Form CLC–102) the insurer shall state the proportion of its premium volume that is thus excluded. The amendments to § 150.415 include references to Forms CLC–101 and 102 which have not been published. The Council anticipates the publication of the proposed Forms CLC–101 and 102 within the near future, as well as Form CLC–27 relating to prenotification and reporting requirements for HMOs.

Section 150.501 has been amended to clarify the scope of Subpart O. Essentially, the applicability of Subpart O is limited as provided in Subpart R.

Several minor changes have been made in Part 155 to update and correct references to the new health care sections of the regulations. Section 155.21 (c) has been amended to provide for the new reporting requirements of § 150.415 of Subpart M. Paragraph (d) of § 155.21 has also been amended to include reference to persons subject to Subpart R. Section 155.41 has been amended to include reference to persons subject to Subpart R.

Subpart R—Health Care, Acute Care Hospitals

There have been a number of clarifying changes in the acute care hospital regulations and a number of changes correcting typographical or other minor errors in the regulations published January 23, 1974. Other changes explained in this preamble are of substance and represent a refinement of the health care regulations.

In § 150.701, the March 31, 1974 deadline for the election between Subpart O and Subpart R has been changed to Monday, April 1, 1974. Paragraph (c) of § 150.701 has been revised to make clear that acute care hospitals subject to the HMO sections (§§ 150.758 through 150.764) are subject to the option provision of § 150.701. Paragraph (d) of § 150.701 clarifies that distinct long term care units within acute care hospitals are subject to the long term care sections (§§ 150.769 through 150.788) in lieu of §§ 150.701 through 150.722.

A paragraph (e) has been added to § 150.701 to emphasize that the acute care hospital regulations of Subpart R shall prevail over any other provisions of Part 150, should there be any conflict.

Several definitions in § 150.703 have been revised. The definition of "Cost reimbursement arrangement" has been amended to include arrangements for payment on the basis of charges when charges are less than cost. "Free care" has been redefined as the customary charges for health care services and property furnished to an inpatient unable to pay and for which a bill is not rendered to the patient or third party payor. "Free care" also includes the difference between the customary charge and the amount actually billed. The definition expressly excludes contractual allowances, bad debts and courtesy discounts.

An important change has been made in the definition of "new facility." Basically, the decision has been made to limit "new facility" treatment to hospitals which commence operations for the first time or have not operated for one year prior to current operations, or which have undergone physical replacement. Thus, as of the date of issuance of these clarifying amendments, the 70 percent test is no longer available to qualify a hospital as a new facility. That test is related to a determination of quality of services or property under the Phase II/III rules (6 CFR 300.409). Since any capital expenditure will result in an add on to the authorized base, there is no need to give special treatment to capital expenditures amounting to 70 percent net of book value. Under the definition as amended, "new facility" status will be allowed for any hospital that met the 70 percent or $100,000 test, which receives a "new facility" determination in response to a request filed prior to March 20, 1974, or which receives approval from the State planning agency or the Council in response to a request filed between January 1, 1974 and March 20, 1974, or which meets the requirements of § 150.713(a)(2).

The definition of "new market" has been deleted. Any situation formerly covered by that term will be treated as a new facility. The definition of "total inpatient reimbursed expenses" has been clarified to include total inpatient operating expenses either accrued or paid, or accrued and paid under the cost reimbursement arrangements.

Following publication of the final health care regulations in January it became apparent that § 150.704 was subject to conflicting interpretation. The prior commitments section was therefore clarified. As amended, § 150.704 provides that interpretations, decisions and prospective exceptions issued to hospitals prior to January 17, 1974, remain in force. Paragraph (b) of this section provides that the prior commitment shall not apply to exceptions authorizing dollar increases under Subpart O to hospitals that are subject to Subpart R

(either by election or automatically by the provisions of § 150.701). In other words, an exception under the Phase III rules granting a dollar increase in the future may be used only under the Phase III rules. The exception is inoperative under Phase IV rules. Finally, § 150.704 has been clarified to permit the annualization of charge increases and charges for new services allowed and put in effect during a hospital's last fiscal year under Subpart O, for purposes of determining the base for allowances under Subpart R.

The basic limitation of § 150.705 has been amended in several minor respects. The 7.5 percent limitation on increased charges and expenses is computed by reference to the lesser of the authorized or actual levels of charges and expenses in the base year. Paragraph (a) has been further amended to apply the adjustments of §§ 150.706, 150.708 and 150.712 to the trigger (total inpatient operating expenses) relaxing the limitations on total inpatient reimbursed expenses. Here again, the percentage limitation is computed by reference to the lesser of the authorized or actual level of total inpatient operating expenses per admission.

Paragraph (b) of § 150.706 has been amended to provide that the limitation on total inpatient reimbursed expenses shall not apply if total inpatient operating expenses do not exceed 107.5 percent of the authorized or actual level of total inpatient operating expenses for the preceding year, whichever is less. The substance of § 150.706(e) has been retained under the special pricing rules, § 150.709.

Section 150.707 has been changed in several places to provide greater clarity. References to "prices" in the formula in § 150.707(c)(2)(iii) have been changed to "charges." In § 150.707(c)(1) the parenthetical phrase has been deleted, since the rounding to the nearest quarter dollar was never intended to authorize increases up to a quarter dollar over allowables. Rounding remains permissible so long as the charge increase limitations are not exceeded.

In § 150.707(c)(2)(iii), "B_2" in the formula has been clarified to mean total gross charges during the immediately preceding fiscal year for outpatient services and property subject to the limitations of this section. Section 150.707(c)(3), as now amended, gives hospitals the option to use an alternative formula for determining %AWCI.

A number of changes have been made in § 150.709 to clarify the section itself, and to enable hospitals to understand more easily the inter-relationship of the special pricing rules and the capital expenditure provisions. Section 150.709(a) thus provides that the rules of this section may only be used as authorized in other sections of Subpart R; specifically, §§ 150.713 and 150.714(c).

For example, the price rule available to a new facility may be used only if the capital expenditure which results in the new facility meets the requirements of § 150.713 or § 150.714(c).

Section 150.709(b) is similar to § 150.709(a) of the regulations issued January 17, 1974. The references to new markets and capital expenditures not meeting the definition of a new facility have been deleted. A new facility, which, as previously explained, would include a new market situation, may utilize the special pricing rules of § 150.709(b). Section 150.709(e) applies to approved capital expenditures that do not result in a new facility.

Section 150.709(b) (1), (2) and (3) has undergone minor changes. The first has been amended to set the occupancy rate at "not less than" 65 percent (or such higher figure as may be appropriate). Section 150.709(b) (1), (2) and (3) have each been amended by the substitution of the word "interest" for "debt service" in the regulations as issued January 17, 1974. The previous allowance of debt service and depreciation costs inadvertently provided a double allowance for principal.

Section 150.709(b) of the previous regulations has been deleted. Phased construction will be priced as a single capital expenditure or as distinct capital expenditures.

The language in § 150.709(d) has been changed and the last sentence of this paragraph as issued on January 17, 1974, has been deleted. The effective limit of the time in which the special price rules may be used is unchanged.

Section 150.709(e) has been substantially revised to clarify the manner of pricing services because of capital expenditures. In the case of a capital expenditure which results in a new facility, the hospital may establish new charges for all services and property. For other capital expenditures, for each fiscal year in which the capital project is being constructed (or if it is not a construction project, for the fiscal year in which the project is being introduced) and during the first fiscal year of operation, the hospital may establish a level of charges and expenses sufficient to produce the level of revenues approved by the State agency described in § 150.713(c) or by the Council. The hospital shall determine for each fiscal year prior to the second full fiscal year of operation the allowable total inpatient operating charges and expenses. In each of the applicable fiscal years the level of charges and expenses established under § 150.709(e) are added to the base to which the adjustments authorized by §§ 150.705, 150.706, 150.708 and 150.712 are made.

Section 150.709(f) has been amended by the addition of a provision which subjects outpatient charges provided in a new facility to the unit charge limitations of § 150.707(c)(1) in the first full fiscal year after the service or property was made available to patients, and thereafter to § 150.707(c) (1) or (2).

The title of § 150.710 has been changed to "Charge schedules," and the last sentence has been amended to clarify that charge increases must be entered on the charge schedule before they may be implemented. The posting requirement and the requirement that he schedule be available for inspection remains in effect whether or not there is a charge increase.

Section 150.711, formerly reserved, now requires the maintenance of records sufficient for the hospital to establish its compliance status. Such records must be available for inspection upon request of an officer or employee of the Council, or any other person authorized to represent the Council. The section establishes a retention period of 3 years from the end of the fiscal year to which the records pertain.

A number of clarifying changes have been made in the patient mix section. The provisions under System B in § 150.712(b) have been amended to provide as an alternative system the Eighth Revision, International Classification of Diseases, which is the official disease classification in use by the U.S. Government and which has also been widely adopted by acute care hospitals. Several clarifying changes have been made in § 150.712 (c), steps 6 through 8, including the substitution of "total inpatient operating expenses" in step 8 in place of "total inpatient reimbursed expenses."

The provisions of § 150.712(f) relating to the patient mix adjustment have been amended to include the percentage limitation of § 150.708 along with those of §§ 150.705 and 150.706. The prenotification required by § 150.712(f) must be given to the Council as soon as the hospital becomes aware of the trend in patient mix permitting the adjustment.

Section 150.713 relating to State approval procedures for capital expenditures has been substantially revised. Except as provided in § 150.713(a)(2), when a hospital has the approval of the State planning agency for a capital expenditure pursuant to § 150.713, it may establish new charges in accordance with § 150.709 necessary to produce, but not to exceed, the level of revenues approved by the State agency.

Section 150.713(a)(2) excepts from the provisions of paragraphs (b) through (f) of § 150.713 and paragraph (c) of § 150.714 those hospitals that have taken the following actions prior to January 1, 1974:

The hospital shall have obtained an approval on the merits by the State planning agency on the basis of community need for the capital expenditure. This requirement shall not apply, however, where the State approval procedures of § 150.713(b)(1) were neither required nor available. In the case of capital expenditures involving construction, the hospital shall have completed and have the approval of the governing board for the design development for the capital expenditure.

In the case of capital expenditures that do not involve construction, the hospital shall have been committed to the capital expenditure by authorization of the hospital's governing board and one or more implementing financial obligations shall have been contractually incurred in reliance on the authorization. Where these requirements have been met the hospital may establish new charges in accordance

with § 150.709. The Council reserves the right to review the application of the special pricing rules authorized by this paragraph and to take appropriate action if it determines that the requirements have not been met.

Section 150.713(c) requires hospitals to obtain approval from the State agency of a level of revenues that is not unreasonable to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, for the first full fiscal year of operations. This paragraph, as amended, also specifies that before a State approving agency may act pursuant to this section, the Council and the State agency shall have first agreed in writing for the State agency to approve capital expenditures pursuant to this section.

Section 150.713(d) has been added to authorize the State agency to allow an adjustment, where appropriate, for changes in volume of admissions resulting from a capital expenditure involving a change in bed capacity.

Several clarifying changes have also been made to § 150.713(e). A paragraph (f) has been added to provide for the situation where increased construction costs mean that the hospital needs to obtain approval for a higher level of revenues than originally authorized. The procedure for obtaining approval of a higher level of revenues is the same as used to obtain the original approval, except that in addition the hospital is required to submit documentation to substantiate the changed financial conditions that necessitate the increased level of revenues.

Section 150.714 (a) and (b) has been amended in minor respects for clarification. Section 150.714(c) has been amended to conform its provisions for Council approval of capital expenditures where no State approving agency exists to the provisions of § 150.713 for approval of capital expenditures by State agencies.

Section 150.715 has been amended to provide for the Council to authorize and appoint a Federal official to meet with State advisory agencies, and grant and deny exception requests pursuant to § 150.714.

Section 150.717 has been amended in several respects. Paragraph (a) as amended requires that the Form CLC–61 be filed with the Council, that it be signed by the chief executive officer, administrator or chief financial officer, and that it be furnished upon request to third party payors. Paragraph (b) of § 150.717 requires hospitals which, pursuant to § 150.713(a)(2), establish new charges for services or property resulting from a capital expenditure to append to and file with the Form CLC–61, a statement of incurred expenses and a statement of the method of application of § 150.709 to establish charges, prior to the second full fiscal year after the service or property was first made available to patients.

Section 150.720 has been amended at paragraph (a)(2) by the deletion of the words "charges and" which had been erroneously inserted.

Section 150.720(a) has been amended by the addition of a paragraph (3) to provide authority for the Council to order the reduction of prospective rate payments where the limitations of §§ 150.705 and 150.706 on prospective rate revenues have been exceeded. Paragraph (b) of § 150.720 has been amended to delay the requirement of filing a compliance plan where at the time for filing the annual report an exception request is pending which, if granted, would eliminate the violation. In such case the compliance plan must be filed within 20 days of receipt of the decision and order denying the exception request or granting an amount less than necessary to eliminate the violation.

MEDICAL PRACTITIONERS AND MEDICAL LABORATORIES

A number of clarifying changes have been made to the sections in Subpart R which govern the price increases made by medical practitioners and medical laboratories. Typographical and similar minor errors have been corrected throughout.

Paragraph (b) of § 150.730, "Scope and applicability", has been amended to treat as an HMO provider of health care any medical laboratory which derives at least 75 percent of its aggregate annual revenues from services rendered to Health Maintenance Organization members pursuant to a contract. Similar changes have also been made in those sections governing Health Maintenance Organizations and HMO providers of health care.

A new paragraph (c) has been added to § 150.730 to make clear that the provisions of Subpart R prevail over any possibly conflicting provisions within Part 150.

Section 150.731 *Continued applicability of existing regulations* has been expanded to specify that the prices in effect on December 28, 1973 shall be used as the base for the computation of allowable price increases.

The date for determining eligible base period fiscal years in the definition of "base period" in § 150.732 has been changed from August 15, 1968 to August 14, 1968. This change has been made in recognition of the fact that a fiscal year ending on August 15, 1968 would have been one of the three most recently completed fiscal years at the time the Economic Stabilization Program was announced on August 15, 1971. Fiscal years ending prior to August 15, 1968 which had been previously authorized for inclusion in the base period remain unaffected by the change.

The definition of "medical laboratory" has been modified to clarify the Cost of Living Council's intent that only independent medical laboratories are subject to the price controls on medical laboratories. If a firm providing laboratory services meets the definition of a medical practitioner or is owned or operated by an acute care hospital or long term care institution, it is not considered a "medical laboratory" notwithstanding the fact that it otherwise fits within that definition.

A typographical error has been corrected in the definition of "new market" by changing the citation for a medicare locality from 30 CFR 405.505 to 20 CFR 405.505.

The definition of "price" has been revised. Formerly the charge for a service or property was the price, even where the charge was greater than the amount actually reimbursed. Under the revised definition, in such a case the amount actually reimbursed is the price. The medical practitioner in revising his prices must subject such amounts to the unit price increase limitation or to the aggregate weighted price increase limitation of § 150.734.

Section 150.733 *Prior commitments* has been amended to permit the use of the aggregate weighted price increase formula provided in this subpart for unused allowable percentage price increases accumulated from Phases II and III.

Section 150.734 *Price increase limitations* has been amended to clarify that only the prices for services and property related to the provision of health care are subject to control under Subpart R. The rounding to the nearest quarter dollar provision has been deleted since it was not the Council's intention to make rounding of the price charged mandatory; rounding remains permissible so long as the price increase limitations are not exceeded. The Cost of Living Council has also determined that unused price increases in a fixed dollar amount contract may be accumulated for more than one calendar year; paragraph (c) has been amended to reflect this decision. Paragraph (d)(3) has been revised to give the medical practitioner or medical laboratory the option of using an alternative formula for determining %AWPI.

The revenue margin limitation provision, § 150.735, has been amended in paragraph (b) to identify more clearly the years for which salary and certain deferred compensation must be excluded from operating expenses.

The only change in § 150.736, "New services and property," is to delete the phrase "or expenses" in paragraph (c) since § 150.736 makes no provision for the establishment of an expense level for new services or property.

Section 150.738 *Price schedules* has been amended to clarify that price increases must be entered on the price schedule before they may be implemented. The posting requirement and the requirement that the schedule be available for inspection remains in effect whether or not there is a price increase.

The address for submission of compliance plans in § 150.741 *Remedies for non-compliance* is now the "Office of Health" instead of the "Office of Health (Compliance)."

A new § 150.743 *Reporting* has been added to provide for reporting to the Cost of Living Council upon request of the Council on Form CLC–81. Another new section, § 150.74, has been added to provide for the retention and avail-

ability of records. The savings and severability provision has been renumbered from §§ 150.743 to 150.745.

HEALTH MAINTENANCE ORGANIZATIONS (HMOs) AND HEALTH MAINTENANCE ORGANIZATION PROVIDERS OF HEALTH CARE

Section 150.748 *Scope and applicability* has been rewritten to make the effective date of these rules for Health Maintenance Organizations January 1, 1974, consistent with the provision in § 150.752 that all rate increases after December 31, 1973 must be made in accordance with the criteria set forth in that section. The revised section also makes the effective dates for HMO providers of health care consistent with the dates specified for acute care hospitals, medical practitioners, medical laboratories, and long term care institutions.

Section 150.749 *Continued applicability of existing regulations* has also been revised to correspond with the equivalent provisions elsewhere in Subpart R.

The definition of "HMO provider of health care" in § 150.750 has been expanded to include a medical laboratory under contract to an HMO which derives at least 75 percent of its aggregate annual revenues from services rendered to HMO members.

The prior commitments section, § 150.751, has been extensively revised to correspond with the changes made in §§ 150.704, 150.733 and 150.772 for acute care hospitals, medical practitioners and medical laboratories, and long term care institutions. The revisions provide the same authorizations for HMO providers of health care to adjust the base on which the Subpart R allowances are computed as are authorized for acute care hospitals, medical practitioners, medical laboratories, and long term care institutions.

Factors that may be used in the rate-making process to anticipate costs or price increases, § 150.752(a)(5), have been modified to include outpatient care provided in a long term care institution and health care provided by a medical laboratory. The factor representing provision of health care by medical practitioners or medical laboratories has been revised to make clear that contracts on a percentage of gross or net revenue basis are treated the same as contracts on a fee-for-service basis.

The form on which an HMO is to prenotify a rate increase has been specified in an amendment to § 150.754 *Prenotification*. The Form CLC–27 is to be used both for prenotification and for annual reports required under § 150.760.

Section 150.757 *Federal employees health benefits law* has been corrected by the reinsertion of language which was inadvertently omitted in both the proposed and final regulations governing HMOs. The additional language corresponds to the language in § 150.413 *Federal employees health benefits law* of Subpart M—Insurance.

Section 150.760 *Reporting* has been amended to specify that the annual report, filed on Form CLC–27, shall be signed by the chief executive officer or by an individual to whom he has delegated that authority. A copy of the delegation must be filed with the Cost of Living Council.

The rules for HMO providers of health care, § 150.761, have been modified to subject medical laboratories to the same limitations as medical practitioners and to clarify the Council's intent that contracts on a fee-for-service basis include contracts for a percentage of gross or net revenue. The rules have been further modified to make HMO providers of health care that are acute care hospitals and long term care institutions subject to the capital expenditure approval provisions, §§ 150.713, 150.714(c), 150.781, and 150.782(c), in addition to the special pricing rules, §§ 150.709 and 150.778, as appropriate.

A new § 150.763 *Retention and availability of records*, has been added and the existing § 150.763 *Savings and severability* has been renumbered § 150.764.

Corrections of typographical errors and changes in citations to correspond with these amendments have been made when necessary throughout these rules.

LONG TERM CARE INSTITUTIONS

On February 7, 1974, the United States District Court for the District of Columbia enjoined enforcement of the Economic Stabilization price regulations against nursing homes. The Council has appealed this decision to the Temporary Emergency Court of Appeals. These amendments to §§ 150.769 through 150.788 are being published for those long term care institutions not covered by the Court's order. With respect to nursing homes covered by the Court's order, the Council will take such action in the future as may be appropriate under the terms of a final Court order.

Many of the changes in §§ 150.769 through 150.788 parallel the changes made in §§ 150.701 through 150.722 relating to acute care hospitals which are discussed above. In particular, reference should be made to the earlier discussions of changes in the following sections: "Scope and applicability" (§§ 150.701 and 150.769), "Definitions," particularly that of "New facility" (§§ 150.703 and 150.771), "Prior commitments" (§§ 150.704 and 150.772), "Special pricing rules" (§§ 150.709 and 150.778), "Price schedules" (§§ 150.710 and 150.779), "Reporting procedures" (§§ 150.717 and 150.780), "Approval of capital expenditures by a State's planning agency" (§§ 150.713 and 150.781), "Exceptions" (§§ 150.714 and 150.782), "Advisory State actions" (§§ 150.715 and 150.783), and "Retention and availability of records" (§§ 150.711 and 150.787). The changes discussed below are unique to the sections relating to long term care institutions.

In § 150.772 relating to prior commitments, the provision for annualizing price increases allowable under Subpart O has been modified to conform with the long term care limitation on average realized revenues per diem. Section 150.772(c) now provides that for purposes of calculating the base, a long term care institution may use the average per diem charges lawfully in effect for each class of purchasers and level of care on the last day of the institution's last fiscal year under Subpart O and, for cost reimbursement arrangements, the total authorized cost reimbursements expressed on a per diem basis for the last fiscal year under Subpart O.

In § 150.775, the limitation on increases for outpatient services has been changed from a "price" limitation to a "charge" limitation in light of the fact that the definition of "price" under the Phase II/III health care regulations has been construed to include, in addition to a direct price paid, a price reimbursed by a third party payor on a cost basis. The intention of the Cost of Living Council under the Phase IV health care regulations is to control only the charges for outpatient services provided by a long term care institution.

APPENDIX TO SUBPART R

Only typographical corrections have been made in the Appendix to Subpart R—Control of Hospital Costs under the Economic Stabilization Program.

Because it is intended to authorize immediate application of these revised Phase IV health care regulations, the Council finds that publication in accordance with normal rule making procedure is impractical and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit written comments regarding these amendments. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489).

In consideration of the foregoing, 6 CFR Parts 150 and 155 are amended as set forth herein, effective March 20, 1974.

Issued in Washington, D.C., on March 20, 1974.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

1. In 6 CFR Part 150, the table of contents is amended by revising the following items for Subpart R:

Subpart R—Health Care

ACUTE CARE HOSPITALS

150.701 Scope and applicability.
150.702 Continued applicability of existing regulations.
150.703 Definitions.
150.704 Prior commitments.
150.705 Limitation on charge and expense increases per inpatient admission.
150.706 Volume adjustment for change in inpatient admissions.
150.707 Limitation on charge increases for outpatient services.
150.708 Cumulative increases.
150.709 Special pricing rules.
150.710 Charge schedules.
150.711 Retention and availability of records.

Sec.
150.712 Adjustment for significant changes in patient mix.
150.713 Approval of capital expenditures by a State's planning agency.
150.714 Exceptions.
150.715 Advisory State actions and Federal Approving Officers.
150.716 State control program.
150.717 Reporting procedures.
150.718 Self-monitoring.
150.719 Prohibition.
150.720 Remedies for non-compliance.
150.721 Communications with the Cost of Living Council.
150.722 Savings and severability.

MEDICAL PRACTITIONERS AND MEDICAL LABORATORIES

150.730 Scope and applicability.
150.731 Continued applicability of existing regulations.
150.732 Definitions.
150.733 Prior commitments.
150.734 Price increase limitations.
150.735 Revenue margin limitation.
150.736 New services or property.
150.737 Group practice.
150.738 Price schedules.
150.739 Exceptions.
150.740 Prohibition.
150.741 Remedies for non-compliance.
150.742 Communications with the Cost of Living Council.
150.743 Reporting procedures.
150.744 Retention and availability of records.
150.745 Savings and severability.

HEALTH MAINTENANCE ORGANIZATIONS AND HEALTH MAINTENANCE ORGANIZATION PROVIDERS OF HEALTH CARE

150.748 Scope and applicability.
150.749 Continued applicability of existing regulations.
150.750 Definitions.
150.751 Prior commitments.
150.752 Criteria for rate increases.
150.753 Change in ratemaking formula.
150.754 Prenotification.
150.755 Certification by State regulatory agency.
150.756 Self-certification.
150.757 Federal employees health benefits law.
150.758 Cost of Living Council actions.
150.759 HMO rates subject to State laws.
150.760 Reporting.
150.761 HMO providers of health care.
150.762 Prohibition.
150.763 Retention and availability of records.
150.764 Savings and severability.

LONG TERM CARE INSTITUTIONS

150.769 Scope and applicability.
150.770 Continued applicabiltiy of existing regulations.
150.771 Definitions.
150.772 Prior commitments.
150.773 Limitations on average realized revenues per diem.
150.774 Application of limitations.
150.775 Limitation on price or cost increases for outpatient services.
150.776 Medicaid reimbursement rates.
150.777 Patient's personal funds.
150.778 Special pricing rules.
150.779 Price schedules.
150.780 Reporting procedures.
150.781 Approval of capital expenditures by a State's planning agency.
150.782 Exceptions.
150.783 Advisory State actions and Federal Approving Officers.
150.784 State control program.
150.785 Prohibition.
150.786 Remedies for non-compliance.
150.787 Retention and availability of records.
150.788 Savings and severability.

Appendix to Subpart R—Control of Hospital Costs under the Economic Stabilization Program.

2. Section 150.57 of Subpart D is amended to read as follows:

§ 150.57 Certain providers of health care.

(a) Except as provided in paragraph (b) of this section, the following health care providers and categories of health care providers are exempt from the coverage of this part:

(1) Blood banks and blood donor stations.
(2) Chiropractors.
(3) Clinical psychologists.
(4) Clinics and dispensaries.
(5) Christian Science practitioners.
(6) Community mental health centers.
(7) Contact lens technicians.
(8) Curative baths or spas.
(9) Dental laboratories.
(10) Dieticians.
(11) Drug and alcohol abuse centers.
(12) Family planning clinics.
(13) Health camps and resorts.
(14) Homemaker, home health aide, and home health agencies or services.
(15) Housing for the elderly not included in the definition of "long term care institution" of § 150.771.
(16) Inhalation therapists.
(17) Institutions for the mentally retarded.
(18) Medical photography.
(19) Midwives.
(20) Migrant health clinics.
(21) Naturopaths.
(22) Neighborhood health centers.
(23) Nutritionists.
(24) Occupational therapists.
(25) Opticians.
(26) Optometrists.
(27) Oxygen tent service.
(28) Physiotherapists who are not licensed physicians.
(29) Psychiatric social workers.
(30) Rehabilitation outpatient centers (therapy and treatment).
(31) Tuberculosis and other sanatoria.
(32) Visiting nurse associations.
(33) Vocational rehabilitation institutions.
(34) Any other institutions for residential shelter or child care services not included within the definition of long term care institution.

(b) Except for homemaker, home health aide, and home health agencies or services and visiting nurse associations or services for which separate financial accounts are maintained, the exemption provided in paragraph (a) of this section does not apply to—

(1) Any health care provider, including a clinic or dispensary, which is owned or operated by an acute care hospital, long term care institution, Health Maintenance Organization or HMO provider of health care services (excluding an HMO provider who is a medical practitioner) as defined in Subpart R of this part; and

(2) Any clinic or dispensary which is owned or operated by a medical practitioner as defined in Subpart R of this part.

(c) The exemption provided in this section shall be applicable to all services and property furnished by these health care providers during the fiscal year ending on or after January 1, 1974 and all subsequent fiscal years.

3. Section 150.415 is amended to read as follows:

§ 150.415 Monitoring by health insurers.

(a) Each health insurer is authorized and expected to monitor and report to health care providers any price increases by those providers that involve significant deviation from the provisions that apply to those providers and any increases in use of services or benefits that significantly exceeds its experience with that provider. Upon the receipt of such a report, the provider and the insurer shall make a good faith effort to determine whether any violation of this part has occurred and to take any steps to remedy such violation.

(b) Each health insurer is authorized and expected in connection with its customary claims practices to review a percentage of the claims it processes which involve medical practitioners' fees to assist medical practitioners to comply with the limitations on increases in individual fees in § 150.734. The percentage of claims selected for review must be acceptable to the Cost of Living Council. The claims selected for review shall consist of (1) selected claims in which the practitioner's fee exceeds the fee determined by the insurer to be the prevailing fee for the geographic area or varies significantly from the practitioner's usual fee and (2) a random selection from all other claims payable by the carrier. Unless otherwise directed by the Council, an insurer in selecting claims for review need not include claims under coverages which represent an insignificant portion of that insurer's premium volume. In its semi-annual report (Form CLC–102) the insurer shall state the proportion of its premium volume that is represented by coverages excluded from review. For each claim reviewed, the insurer may request from the medical practitioner involved the price schedule required by § 150.738. Each insurer shall report to the Council on Form CLC–101 all instances of apparent non-compliance for possible investigation by the Council to determine whether there has been a violation of Subpart R. In addition, each insurer shall report to the Council on Form CLC–101 a 10 percent random sample of all other claims it reviews under this paragraph. The insurer shall include in each report to the Council any price schedule received from the medical practitioner concerned.

(c) Each health insurer shall file semi-annual reports not later than 45 days after the end of its second and fourth

quarters, on its monitoring activities under paragraph (b) of this section with the Cost of Living Council on a Form CLC–102.

4. Section 150.501 of Subpart O is amended to read as follows:

§ 150.501 Scope.

This subpart applies to institutional providers of health services. Except as provided in §§ 150.1, 150.2, 150.3, the definition of "base period" in §§ 150.31, 150.57, and Subpart R, no other provisions of Part 150 apply to institutional providers of health services.

5. Part 150 is amended by the addition of a new Subpart R to read as follows:

Subpart R—Health Care

ACUTE CARE HOSPITALS

§ 150.701 Scope and applicability.

(a) Sections 150.701 through 150.722 apply to each acute care hospital whose fiscal year commences on or after January 1, 1974. However, an acute care hospital may make an irrevocable election:

(1) To be governed by this subpart if its current fiscal year commenced on or after August 15, 1973, but before January 1, 1974; or

(2) To be governed by Subpart O of this part in effect on December 31, 1973, if its fiscal year commences on or after January 1, 1974, but before April 1, 1974. In no event may an acute care hospital elect to be governed by Subpart O if its fiscal year commences on or after April 1, 1974.

(b) No election made under paragraph (a) (1) or (2) of this section by any acute care hospital is valid unless the hospital files with or mails to the Cost of Living Council written notice of its specific election. The written notice must be filed with the Council not later than April 1, 1974, or mailed to the Council by certified or registered mail (return receipt requested) postmarked no later than April 1, 1974. No notice is required if the acute care hospital does not make an election referred to in paragraph (a) (1) or (2) of this section.

(c) Notwithstanding paragraph (a) of this section, an acute care hospital which is owned or operated by or is under contract to a Health Maintenance Organization and which derives at least 75 percent of its gross inpatient operating charges from services rendered to enrolled participants, is subject to this section and to §§ 150.748 through 150.764 governing Health Maintenance Organizations.

(d) Long term care, provided as a distinct unit of an acute care hospital and for which separate financial accounts are maintained by the hospital, is subject to §§ 150.769 through 150.788, in lieu of §§ 150.701 through 150.722.

(e) To the extent that §§ 150.701 through 150.722 of this subpart may conflict with other provisions of this part, §§ 150.701 through 150.722 shall prevail.

§ 150.702 Continued applicability of existing regulations.

Except as otherwise provided in § 150.701, each acute care hospital whose current fiscal year begins prior to January 1, 1974, is subject until the completion of its current fiscal year to Subpart O of this part in effect on December 31, 1973.

§ 150.703 Definitions.

For purposes of this subpart and in addition to the definitions in § 150.31:

"Acute care hospital" means any hospital that meets the requirements of the American Hospital Association for registration as a general or special hospital (see "Classification of Health Care Institutions," 1968 edition, American Hospital Association, 840 North Lake Shore Drive, Chicago, Ill. 60611) and in which the average length of stay for all patients is less than 30 days or over 50 percent of all patients are admitted to units where the average length of stay is less than 30 days.

"Admissions" means the number of patients (including free care patients) accepted for inpatient service either in beds licensed for hospital care or, in states where licensing is not required, in beds staffed for hospital care. For the purpose of this definition, births or transfers between departments may be treated as admissions if the hospital has by consistent administrative practice treated transfers or births as admissions.

"Capital expenditure" means an expenditure defined as a capital expenditure in 42 CFR 100.103(a) of the regulations implementing section 1122 of the Social Security Act as added by section 221(a) of the Social Security Amendments of 1972 (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)).

"Cost reimbursement arrangement" means any formula provided by contract or legislation to calculate the final amount payable for health services furnished by an acute care hospital on the basis of cost rather than charges or on the basis of charges when the charges are less than cost. Arrangements pursuant to which the amount to be reimbursed for one year is calculated on the basis of costs occurring in any other year are not cost reimbursement arrangements.

"Design development" means the documentation which describes the size and character of the construction project, including:

(1) the site plan indicating the nature of the improvements such as topography, utilities, and streets;

(2) plans, elevations and sections required to describe the project with respect to structural, mechanical and electrical systems;

(3) schedules and lists required to identify all fixed equipment with respect to character, size, function and finishes of interior spaces; and

(4) a general description of the types and requirements of the materials to be used.

"Free care" means the customary charge for health care services and property furnished to an inpatient unable to pay for such services or property and for which a bill is not rendered to the patient or third party payor. It also includes the difference between the customary charge for an inpatient service or property and the amount actually billed to the patient. Contractual allowances, bad debts, and courtesy discounts are excluded from the scope of this definition.

"New facility" means an acute care hospital which:

(1) commences operation for the first time, or which has not operated for at least one year prior to its current date of operation; or

(2) has undergone physical replacement; or

(3) has undergone major renovation, remodeling or expansion that costs a dollar amount equal to 70 percent of the book value (net of accumulated depreciation) of the property, plant and equipment in service at the end of the fiscal year in which the hospital was committed to construction by prior authorization of the hospital's governing board, or $100,000, whichever is greater, and which

(i) Receives a "new facility" determination in response to a request filed with the Council prior to March 20, 1974, under Cost of Living Council Notice 73–2 (38 FR 30798); or

(ii) Receives approval from the State planning agency or the Council in response to a request filed on or after January 1, 1974, and prior to March 20, 1974, for approval of a capital expenditure pursuant to § 150.713 or § 150.714 (c); or

(iii) Has undertaken a capital expenditure that meets the requirements of § 150.713(a)(2).

For purposes of this definition, the mere acquisition of a hospital or of the person that controls the hospital by another person does not result in the creation of a new facility.

"New service" means a service or property which the hospital did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of this definition, a change in appearance or arrangement, or a change in the method or technology of providing a service, does not create a new service or property.

"Prospective rates" means payments applicable to third party payors established in advance for health care services, without provision for retrospective adjustment based on actual charges or costs incurred during the year in which the services were rendered.

"Total inpatient operating charges" means the sum of gross charges for all services performed on an inpatient basis in any fiscal year, computed by taking the sum of all inpatient service charges for the year concerned, including—

(1) Charges for daily patient services (routine services);

(2) Charges for other nursing services (operating room, central services and supplies, and similar services);

(3) Charges for other professional services (ancillary-laboratory, radiology, anesthesiology, and similar services); and

(4) All other inpatient service charges not covered above;

But excluding those charges not collected as a result of free care.

"Total inpatient operating expenses" means the sum of all operating expenses determined in accordance with generally accepted accounting principles for hospitals as reflected in the AICPA Hospital Audit Guide (1972 edition, American Institute of Certified Public Accountants, Inc., 666 Fifth Avenue, New York, New York 10019), or by a system of accounting principles approved for use by Blue Cross (as defined in the principal Blue Cross plan in the community served by the hospital), Medicare, or a State Uniform Hospital Accounting System (as defined in the relevant state statutes and implementing regulations); and allocated to inpatient services in accordance with one of the latter three accounting systems. Once a selection of accounting principles has been made by an acute care hospital from among the systems identified above, the hospital may not thereafter adopt a different system without prior written approval by the Council, but must consistently apply the principles in all relevant calculations required by the Economic Stabilization Program.

"Total inpatient reimbursed expenses" means the total inpatient operating expenses accrued or paid or accrued and paid, under cost reimbursement arrangements.

§ 150.704 Prior commitments.

(a) Except as provided in paragraph (b), of this section, all interpretations, and decisions or exceptions having prospective effect, issued under the Economic Stabilization Act prior to January 17, 1974, to acute care hospitals covered under this subpart remain in force.

(b) This section shall not apply to any exception issued under Subpart O of this part authorizing a dollar increase to any hospital that is subject to Subpart R pursuant to § 150.701.

(c) Each acute care hospital may annualize the charge increases and charges for new services allowed and implemented under Subpart O of this part in effect on the last day of the hospital's last fiscal year under Subpart O of this part, for purposes of calculating the base on which allowances are authorized under this subpart.

§ 150.705 Limitation on charge and expense increases per inpatient admission.

(a) Except as otherwise provided in these regulations, an acute care hospital's total inpatient operating charges per admission and total inpatient reimbursed expenses per admission during any fiscal year may not exceed 107.5 percent of their respective authorized or actual levels for the preceding fiscal year, whichever respective level is less. This limitation on total inpatient reimbursed expenses per admission does not apply if the total inpatient operating expenses per admission do not exceed 107.5 percent, as may be adjusted in accordance with §§ 150.706, 150.708 and 150.712, of the authorized or actual level of total inpatient operating expenses per admission for the preceding year, whichever level is less.

(b) The total prospective rate revenues may not exceed the total charges for those patients whose health care is paid on the basis of prospective rates.

§ 150.706 Volume adjustment for change in inpatient admissions.

(a) If during any fiscal year an acute care hospital has more admissions than in its preceding fiscal year, for each admission exceeding 102 percent of the admissions during the preceding fiscal year, total inpatient operating charges and total inpatient reimbursed expenses per admission may not exceed 43 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses per admission does not apply if, for each admission exceeding 102 percent of the admissions during the preceding fiscal year, the total inpatient operating expenses per admission do not exceed 43 percent of the preceding fiscal year's total inpatient operating expenses per admission. However, this paragraph does not require that the overall increase in total inpatient operating charges and total inpatient reimbursed expenses per admission permitted by § 150.705, this paragraph, and § 150.708 be limited to less than 103 percent of their respective levels for the preceding fiscal year.

(b) If during any fiscal year a hospital's admissions are less than 100 percent but not less than 95 percent of its admissions during the preceding fiscal year, its total inpatient operating charges and total inpatient reimbursed expenses for that fiscal year may not exceed 107.5 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses does not apply if the total inpatient operating expenses do not exceed 107.5 percent of the authorized or actual level of total inpatient operating expenses for the preceding year, whichever is less.

(c) If during any fiscal year, a hospital has fewer admissions than in its preceding fiscal year, for each admission less than 95 percent of the admissions during the preceding year, the hospital shall deduct an amount from total inpatient operating charges and total inpatient reimbursed expenses per admission equal to 43 percent of their respective levels for the preceding fiscal year. This limitation on total inpatient reimbursed expenses does not apply if, for each admission less than 95 percent of the admissions during the preceding fiscal year, the total inpatient operating expenses per admission do not exceed 43 percent of the preceding fiscal year's total inpatient operating expenses per admission. However, the overall increase in total inpatient operating charges and total inpatient reimbursed expenses per admission authorized by § 150.705, this paragraph, and § 150.708 shall not exceed 120 percent of their respective levels for the preceding fiscal year.

(d) In the case of a hospital which has either less than $2,500,000 total inpatient operating charges or fewer than 4,000 admissions in its preceding fiscal year, the limitations on total inpatient operating charges and total inpatient reimbursed expenses per admission contained in paragraphs (a) and (c) of this section do not apply unless its admissions increase above 104 percent or fall below 90 percent of the admissions for the preceding fiscal year.

§ 150.707 Limitation on charge increases for outpatient services.

(a) This section applies to—

(1) the charges in each revenue department and cost center, as determined by the hospital's customary accounting practice, in which at least 70 percent of the gross charges of that revenue department or cost center are attributable to the provision of outpatient services; and

(2) the charge for each outpatient service which differs from the inpatient charge for the same service.

(b) Whether or not charges for outpatient services are required to be controlled under this section, all charges attributable to the provision of inpatient services shall be included in the computations made under §§ 150.705 and 150.706.

(c) Each acute care hospital shall control its charges for outpatient services under this section on the basis of either a unit charge system or an aggregate weighted charge system.

(1) If the hospital elects the unit charge system, it may not increase its charge for any outpatient service beyond 106 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year.

(2) If the hospital elects the aggregate weighted charge system:

(i) the aggregate weighted charges for all of its outpatient services may not exceed 106 percent of the aggregate weighted charges for all such services lawfully in effect during the preceding fiscal year; and

(ii) the charge for any outpatient service may not be more than 110 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year (however, this paragraph does not require that charge increases be limited to amounts less than $1.00).

(iii) the formula for determining charge increases computed on an aggregate weighted basis under this paragraph (c)(2), herein referred to as %AWCI, is as follows:

$$\%AWCI = \Sigma \frac{C_2 - C_1}{C_1} \times \frac{B_1}{B_2} \times 100$$

where,

C_1 = the charge lawfully in effect on the last day of immediately preceding fiscal year for a service or property.

C_2 = the highest charge made or to be made during the current fiscal year for that service or property.

B_1 = the actual gross charges during the immediately preceding fiscal year for that service or property.

B_2 = the total gross charges during the immediately preceding fiscal year for all outpatient services and property subject to the limitations of this section.

Σ = the sum of.

(3) At the option of the acute care hospital the formula for determining %AWCI in paragraph (c) (2) of this section may be restated as follows:

$$\%AWCI = \Sigma\ \%I \times \frac{G_1}{B_2}$$

where,

$\%I$=the highest percentage charge increase for any service or property within a group of similar or related services or property.
G_1=the actual gross charges during the immediately preceding fiscal year for that group of similar or related services and property.

(4) If the charges in effect on the last day of the preceding fiscal year had been temporarily lowered to effect a restitution of overcharges to assure compliance by the end of that year, then such charges may be adjusted to the legally authorized level.

§ 150.708 Cumulative increases.

In the application of §§ 150.705, 150.706, and 150.707, charge or expense increases permitted in one year but not fully implemented may be accumlated, but not compounded, and may be implemented only in the fiscal year following the year in which the full allowable increase was not implemented.

§ 150.709 Special pricing rules.

(a) The methods of establishing charges for services or property set forth in this section may be used only after an acute care hospital has been authorized to use these provisions pursuant to other sections of this subpart.

(b) In the case of a new facility resulting from a capital expenditure which meets the requirements of § 150.713 or § 150.714(c), or a new outpatient service or property, the charges for services or property may be determined by any one of the following methods without regard to the limitations prescribed in §§ 150.705, 150.706, and 150.707:

(1) An acute care hospital may establish a charge capable of sustaining without financial loss the provision of the inpatient service or property by the hospital based on an occupancy rate of not less than 65 percent (or such higher figure as may be appropriate) for staffed beds in the hospital; or capable of sustaining without financial loss the provision of the new outpatient service or property by the hospital based on the projected utilization rate of the new outpatient service or property. The charges so determined may reflect an incremental charge attributable to interest and depreciation costs.

(2) An acute care hospital may establish a charge for a service or property which is not unreasonably inconsistent with the prevailing charges of a substantial number of current transactions for a similar service or property by a substantial number of other acute care hospitals. The charges so determined may reflect an incremental charge for interest and depreciation costs.

(3) An acute care hospital may establish its charges by using any charging practice commonly used by a substantial number of acute care hospitals. The charges so determined may reflect an incremental charge for interest and depreciation costs.

(c) New charges authorized pursuant to this section shall become effective no earlier than the first day on which the services or property shall be made available to patients. However, if the request for approval under § 150.713 or the request for exception under § 150.714(c) has not been filed before the close of the fiscal year in which the service or property was made available to patients, then the new charges shall become effective no earlier than the first day of the fiscal year in which the request was filed.

(d) An acute care hospital may use the special pricing rules of this section at any time within, but not later than, twelve months after the service or property described in paragraph (b) of this section was first made available to patients.

(e) In the case of a capital expenditure approved pursuant to § 150.713 or § 150.714(c) which does not result in a new facility, the charges for services or property for inpatient care shall be determined as follows: For each fiscal year in which the project resulting from the capital expenditure is being constructed or otherwise introduced, and during the first full fiscal year of operation, the hospital shall establish a level of charges and incur a level of expenses for the services and property sufficient to produce a level of revenues which has been approved by the agency described in § 150.713(c) or by the Council. The hospital shall calculate the total amount of allowable total inpatient operating charges and total inpatient operating expenses for each fiscal year prior to the second full fiscal year of operation. The level of inpatient charges and inpatient expenses established pursuant to this paragraph shall be added in each applicable fiscal year to the base to which the adjustments authorized by §§ 150.705, 150.706, 150.708 and 150.712 are made.

(f) In the case of a new facility the limitations set forth in § 150.705 shall apply during the second full fiscal year of operation and subsequent fiscal years, and the limitations set forth in § 150.706 shall apply during the third full fiscal year of operation and subsequent fiscal years. For an outpatient service or property which is provided in a new facility and to which the limitations in § 150.707 apply, an acute care hospital shall be subject to the unit charge limitation of § 150.707(c) (1) in the first full fiscal year after the service or property was first made available to patients; thereafter, the hospital may elect as provided in § 150.707(c).

(g) The Council may modify, defer, suspend, or disapprove any charges or expenses implemented pursuant to this section if the Council finds that such charges or expenses are inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program.

§ 150.710 Charge schedules.

Each acute care hospital shall maintain at each of its facilities a schedule showing its charges for all services on the last day of the preceding fiscal year, and each subsequent change in those charges and the date each change was made. The schedule shall be made available for public inspection, and a copy shall be furnished or mailed promptly to third party payors or to the Cost of Living Council upon request. Each hospital shall post an easily readable sign stating the availability and location of the schedule. The sign must be posted conspicuously in each location where payment for services is accepted. No charge increase may be implemented before the increase has been entered on the schedule as required by this section.

§ 150.711 Retention and availability of records.

(a) Each acute care hospital subject to this subpart shall maintain such records as are sufficient to establish the compliance status of the hospital with respect to this title.

(b) Records required to be maintained under paragraph (a) of this section shall be made available for inspection at any time upon the request of an officer or employee of the Council, or of any other person authorized to represent the Council.

(c) Each acute care hospital required to maintain records under this section shall retain such records for at least 3 years after the last day of the fiscal year in which the transactions or other events recorded in such records occurred or the property was acquired by that acute care hospital.

§ 150.712 Adjustment for significant changes in patient mix.

(a) If an acute care hospital experiences significant changes in patient mix, and if the hospital uses either of the systems described in paragraph (b) of this section and the methodology set forth in paragraph (c) of this section to allocate its admissions and to adjust its charges and expenses, the hospital may increase its applicable fiscal year allowances in total inpatient operating charges and total inpatient operating expenses per admission prescribed in §§ 150.705 and 150.706 in accordance with the provisions of this section.

(b) Standard Patient Allocation Systems. An acute care hospital shall use either of the following two standard patient allocation systems to allocate admissions:

System A. An acute care hospital may classify admissions among the following categories:

Medical	Obstetric
Surgical	Psychiatric
Pediatric	

System B. An acute care hospital may use the ICDA-8 "Eighth Revision International Classification of Diseases, Adapted for Use in the United States (Public Health Service Publication No. 1693, U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics, Rockville, Maryland 20852, December 1968)" or the Hospital Adaptation-International Classification of Diseases Adapted for Use in the United States (H-ICDA, 1968 edition, Commission on Professional and

Hospital Activities, 1968 Green Road, Ann Arbor, Michigan 48105) in such a way as to include at least 85 percent of its admissions. The balance of the admissions must be included as "other."

(c) Standard Methodology for Adjustment of Charges and Expenses.

STEP 1. Determine the basic patient categories according to either standard System A or B described in paragraph (b) of this section, or another allocation system.

STEP 2. Determine the current year distribution of patients using the categories selected in Step 1.

STEP 3. Calculate last year's total admissions, and apply the current year's distribution (Step 2) to them, i.e., restate last year's admissions in terms of this year's patient distribution.

STEP 4. Determine on a reliable and valid sample basis last year's gross charges per admission in each of the categories selected in Step 1.

STEP 5. Apply last year's gross charges per admission for each category (Step 4) to the number of "restated" admissions in each category (Step 3) to obtain the "restated" total charges for last year.

STEP 6. Divide the restated total charges (Step 5) by the actual admissions last year to obtain the "restated" charges per admission.

STEP 7. Substract last year's actual or authorized charges per admission, whichever is less, from last year's "restated" charges per admission and divide the result by last year's actual or authorized charges per admission, whichever is less, to obtain a "patient mix factor."

STEP 8. Adjust the limitations of the total inpatient operating charges and total inpatient operating expenses of §§ 150.705 and 150.706 by adding to the limitations set forth in such sections the patient mix factor obtained in Step 7. The supporting calculations must be included with the annual report (Form CLC–61) filed with the Cost of Living Council. For purposes of paragraph (f) of this section, if the adjustment is calculated on the basis of budgeted or projected data, the calculations shall be restated in the annual report on the basis of actual data.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this section, at any time during a fiscal year, an acute care hospital may request approval from the Cost of Living Council of a patient classification system different from those set forth in paragraph (b) of this section to document the effects of patient mix changes. The acute care hospital may also request approval of a methodology differing from that set forth in paragraph (c) of this section to adjust charges and expenses. The acute care hospital must demonstrate in documentation accompanying the request for approval of a differing methodology, the validity and reliability of its data and the proposed method to identitfy the effects of change in patient mix. Once the alternative system or methodology has been approved, the acute care hospital may use it to adjust increases in total inpatient operating charges and total inpatient operating expenses per admission.

(e) Once an acute care hospital has received approval from the Council to document patient mix changes on the basis of an alternative system, any further change in system can be made only with the prior written approval of the Council. The Council will not approve changes to less sophisticated systems.

(f)(1) If the adjustment authorized by this section exceeds 25 percent of the percentage limitation authorized by §§ 150.705, 150.706, and 150.708, and is calculated on the basis of budgeted or projected data, the hospital shall notify the Council in writing of the magnitude of the percentage and dollar amount of the adjustment. The hospital may not apply the adjustment until the notice of the proposed adjustment, Form CLC–61, prepared in accordance with the instructions to Schedule M, and substantiating documentation, have been filed with the Council and 30 days have elapsed from the day on which the notice and substantiating documentation were filed. The notice required by this paragraph shall be filed as soon as the hospital becomes aware of the trend in patient mix which permits the adjustment pursuant to this section.

(2) If the adjustment authorized by this section exceeds 25 percent of the percentage limitation specified in §§ 150.705 and 150.706 but it is calculated on the basis of actual data, the hospital may immediately apply the adjustment up to a maximum adjustment of 25 percent of the percentage limitations specified in § 150.705 or § 150.706 for total inpatient operating charges and total inpatient operating expenses but may not apply that portion of the total adjustment exceeding 25 percent until after thirty days have elapsed following the filing of the annual report required by § 150.717 together with its request for permission to apply the adjustment in full. The Council shall notify the hospital in writing of the date of filing.

(3) During the 30 day period specified in this paragraph, the Council may issue an order disapproving, modifying, suspending or deferring the proposed adjustment in whole or in part, if it finds that the proposed adjustment does not conform to the rules of this part.

(4) The Council may issue a notice temporarily suspending the running of a 30 day period if it finds additional information is necessary, or if it finds that any notice or documentation required by this section is incomplete or inadequate, or if it finds that the annual report required by paragraph (f)(2) of this section is incomplete or insufficient with respect to the patient mix adjustment. The 30 day period shall resume running when the Council notifies the hospital in writing that the additional information has been received and accepted.

(5) If the Council does not act on the proposed adjustment within the 30 day period specified in this paragraph, the hospital may apply the proposed adjustment immediately upon expiration of the 30 day period. Failure of the Council to act upon the proposed adjustment within the 30 day period does not constitute approval of the adjustment and nothing in this section shall be construed to limit the authority of the Council to modify, suspend, disapprove or defer in whole or in part any adjustment applied pursuant to this section if the Council finds that the adjustment is based on erroneous calculations, has been applied in bad faith, or does not conform to the rules of this title.

§ 150.713 Approval of capital expenditures by a State's planning agency.

(a) (1) Except as provided in paragraph (a)(2) of this section, when an acute care hospital has obtained the approval of a State planning agency for a capital expenditure in accordance with the provisions of this section, the hospital may, in accordance with § 150.709, establish new charges for the services or property resulting from the capital expenditure which are necessary to produce, but not to exceed, the level of revenues approved by the agency.

(2) An acute care hospital shall not be subject to paragraphs (b) through (f) of this section or to § 150.714(c), and may establish new charges for the services or property furnished to patients as a result of the capital expenditure in accordance with the applicable provisions of § 150.709 when the following occurrences have taken place prior to January 1, 1974:

(i) the capital expenditure was approved on its merits on the basis of community need by a planning agency listed in paragraph (b) of this section; however, this requirement shall not apply where State approval procedures described in paragraph (b) of this section were neither required nor available to an acute care hospital; and

(ii) (A) With respect to a capital expenditure involving construction, the design development for the capital expenditure was completed and approved by the governing board of the hospital; or

(B) With respect to a capital expenditure which does not involve construction, the hospital was commited to the capital expenditure by authorization of the hospital's governing board and one or more implementing financial obligations were contractually incurred in reliance on the authorization.

The provisions of this paragraph (a)(2) are self-executing. No written determination or ruling of the Council is required to authorize an acute care hospital to apply the special pricing rules of § 150.709 if the hospital meets the criteria set forth in this paragraph.

If the Council determines upon subsequent review that the conditions of this paragraph have not been satisfied, it may disapprove any charges implemented pursuant to § 150.709 or take such other action as may be appropriate to ensure compliance with the rules of this subpart.

(b) A capital expenditure under consideration by the acute care hospital must be approved on the merits, based upon a clear demonstration of community need, by the appropriate planning agency specified in this paragraph. The acute care hospital must request approval from the planning agency designated pursuant to section 1122 of the Social Security Act. (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)). If a State is not participating in the program under section

1122, then the approval must be obtained from the State agency administering a certificate of need program for acute care hospitals. If a State is not participating in a program under section 1122 and has no State agency administering a certificate of need program, then the approval must be obtained from an agency designated under section 314(b) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(b)); otherwise, approval must be obtained from a State agency designated pursuant to section 314(a) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(a)).

(c) Approval of a level of revenues that is not unreasonable to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, for the first full fiscal year of operation must be obtained from either the same agency which granted an approval under paragraph (b) of this section or another agency (such as a rate-setting commission or hospital commission) designated by the governor of the State or the mayor of the District of Columbia to perform this specific function. If a State is participating in the program under section 1122, the agency that performs the function specified in this paragraph must be the agency designated pursuant to section 1122. The agency that performs the function specified in this paragraph shall be referred to as the "State approving agency." Prior to the State approving agency taking any action to approve a level of revenues in accordance with this section the Council and the State agency shall have first agreed in writing for the State agency to approve capital expenditures pursuant to this section. For purposes of this paragraph, the first full fiscal year of operation means the first full fiscal year after the inauguration of all services and property resulting from the capital expenditure.

(d) For a capital expenditure involving a change in bed capacity, the State approving agency is authorized to approve a modification of the adjustment for changes in volume of admissions, where appropriate, to reflect anticipated changes in volume of admissions resulting from the capital expenditure.

(e) Within sixty (60) days after the date of an approval by the State approving agency, the chief executive officer of the acute care hospital shall notify the Council of such approval by sending a copy of the written decision to the Council, together with a written statement signed by the chairman of the governing board of the hospital certifying that funds legally available from restricted reserves have or will be applied to the capital expenditure or its directly related operating expenses in accordance with the approval.

(f) If after the original agency approval it appears that the authorized level of revenues will not reach the level required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, the hospital may file with the State approving agency a request in writing to allow the hospital to achieve a level of revenues in excess of the level originally authorized. A request under this paragraph shall be considered on the same basis as an original request under paragraph (c) of this section, except that in addition, the hospital shall submit sufficient documentation to enable the State approving agency to evaluate changes in financial conditions that have occurred since the original approval under paragraphs (c) and (d) of this section was granted, or other relevant circumstances which significantly alter the assumptions upon which the earlier approval was based. The notification provisions of paragraph (e) of this section shall apply to approvals under this paragraph.

§ 150.714 Exceptions.

(a) No acute care hospital may exceed the limitations set forth in §§ 150.705, 150.706, and 150.707 except as may be authorized pursuant to this subpart. Each acute care hospital making a request for exception shall, in addition to meeting the specific requirements of this section, prepare any request for exception to be filed with the Council in conformity with the general provisions relating to exceptions prescribed by Part 155 of this title and shall obtain the recommendation of the State advisory agency referred to in § 150.715 on the request for exception. The State advisory agency shall forward the hospital's request for exception, together with its recommendation, directly to the Council. The requirement for the recommendation shall not apply if the State advisory agency fails to act within thirty (30) days (and the hospital may then file its request directly with the Council) unless the agency shall have requested corrected or additional information in which case the thirty (30) day period shall be suspended from the date of the request until the agency informs the hospital that the information has been received. The 30 day period shall then resume running.

(b) Requests for exception filed under this section by an acute care hospital are considered to be provisionally approved 60 days after the date of filing of the request with the Council. The Council shall inform the acute care hospital promptly by written notice of the date of filing and the docket number of the request for exception. During the 60 day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60 day period from continuing to run, if the documents submitted by the hospital are incomplete, erroneous or do not meet the criteria set forth in this section. In any case in which the Council issues a suspense notice and requests additional or corrected information from the hospital, the 60 day period shall resume running only after the Council has informed the hospital that the information has been received and accepted. The charge or expense increases authorized by this section shall be applied only to services or property provided to patients by the hospital after the 60-day period has expired. If after implementation of an increase following the expiration of the 60-day period, the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the acute care hospital shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable from the date of expiration of the 60-day period until the Council's determination of the request or be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of the provisional approval of this section.

(c) (1) If the State approval procedures referred to in § 150.713 are not or were not available to an acute care hospital, the hospital may request from the Council an exception to establish, in accordance with § 150.709, new charges for services or property resulting from a capital expenditure which are necessary to produce, but not to exceed, the level of revenues approved by the Council pursuant to this paragraph. The request for exception must be accompanied by supporting documentation, indicating the reason why the approval procedures are or were not available, and permitting the Council to evaluate the following:

(i) Whether there exists a community need for the proposed project adequate to assure financial support without causing localized shortages of labor or serious hospital market disruptions susceptible of requiring other exceptions by the Council;

(ii) Whether the project will foster cost containment initiatives or improved efficiency and productivity in the acute care hospital;

(iii) All expenses attributable to the operating expenses directly related to the capital expenditure, including interest and depreciation, calculated without regard to the annual allowances authorized by this subpart;

(iv) The level of patient service revenues required to finance the proposed project for the first full fiscal year of operation, considering funds legally available from restricted reserves for both capital expenditure and operating expenses; and

(v) The charge and expense level expressed in per admission terms which the hospital would propose to establish to produce the requested level of revenues.

(2) For a capital expenditure involving a change in bed capacity, the Council may approve a modification of the adjustment for changes in volume of admissions, where appropriate, to reflect anticipated changes in volume of admissions resulting from the capital expenditure.

(3) Each request shall be signed by the chief executive officer of the hospital and shall be accompanied by a written statement signed by the chairman of the

governing board of the hospital certifying that funds legally available from restricted reserves have been or will be applied to the operating expenses directly related to the capital expenditures including interest and depreciation as stated in the request for exception.

(4) If after the original Council approval it appears that the authorized level of revenues will not reach the level required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, the hospital may file with the Council a request in writing to allow the hospital to achieve a level of revenues in excess of the level originally authorized. Such requests shall be considered on the same basis as an original request under this paragraph, except that in addition, the hospital shall submit sufficient documentation to enable the Council to evaluate changes in financial conditions that have occurred since the approval under this paragraph was initially granted, or other relevant circumstances which significantly alter the assumptions upon which the earlier approval was based.

(d) An acute care hospital may request an exception for experimentation in hospital reimbursement methodologies. The Council may grant a prospective exception to a single hospital or to a group of hospitals as members of a class, geographic or otherwise. The Council may consult with the Department of Health, Education and Welfare prior to making its determination. Requests submitted pursuant to this paragraph need not be cost justified.

(e) (1) An acute care hospital may request an exception as provided in this paragraph when a serious hardship or gross inequity has been caused by any of the following occurrences:

(i) a demonstrable increase in bad debts experience that causes the hospital's gross charges not to reflect accurately actual collections;

(ii) increased expenses resulting from requirements imposed by law or government regulation; and

(iii) increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 152.32 of this chapter, or are below minimum wage rates imposed by Federal or State statutes of general application.

(2) Each request for an exception shall be evaluated on the basis of cost justification. In reviewing evidence of the cost justification submitted by the hospital, the Council will also consider evidence of cost containment initiatives, prudent management practices and evidence of consistent application of accepted accounting principles demonstrated by the hospital. As part of its evaluation, the Council will review the following financial factors:

(i) all allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(ii) working capital needs; and

(iii) all revenues from patient services, and revenues from other operating activities.

(f) An acute care hospital may request an exception for any reason causing a serious hardship or gross inequity. Each request submitted pursuant to this paragraph shall be evaluated on the basis of cost justification. In reviewing the cost justification submitted by the hospital, the Council will also consider evidence of cost containment initiatives, prudent management practices and consistent application of accepted accounting principles demonstrated by the hospital. As part of its evaluation, the Council will review the following financial factors:

(1) all allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a government board resolution;

(2) working capital needs;

(3) all legally available funds from revenues from patient services, revenues from other operating activities; and revenues from non-operating sources such as unrestricted gifts received during the fiscal year being reviewed or unrestricted income from unrestricted and restricted reserves;

(4) changes in any charges or directly related operating expenses resulting from capital expenditures previously authorized under this subpart or resulting from services or property for which new charges have been authorized under Cost of Living Council Notice No. 73–2 (38 FR 30798); and

(5) evidence of cost behavior that is unanticipated and significantly different from that on which the hospital has budgeted.

§ 150.715 Advisory State actions and Federal Approving Officers.

(a) The governor of each State and the mayor of the District of Columbia are each requested to designate an agency to advise the Council on requests for exceptions to these regulations or on any other matters that the Council may from time to time specify. Each agency shall review the requests for exception filed with it under § 150.714(a) pursuant to the applicable guidelines set forth in this subpart and whenever it considers that the granting of an exception is essential to the provision of adequate health services and consistent with the Economic Stabilization Program shall recommend to the Administrator of the Office of Health, Cost of Living Council, or to an official appointed under paragraph (b) of this section, that an exception be granted by the Council.

(b) The Council may authorize and appoint an official who shall be a full time employee of the Federal Government to whom may be subsequently delegated the authority to issue initial decisions on requests for exceptions submitted under the provisions of § 150.714. Such official may, in his discretion, hear representatives of acute care hospitals, and request and receive additional information. He shall consult with, and receive the advice and recommendations of, State advisory agencies with respect to the requests for exception. After having reviewed the record and considered the recommendation of the State advisory agency, and all applicable statutory and regulatory criteria, he shall grant or deny the request for exception, in whole or in part, or shall forward the request to the Council, with or without a recommendation. He shall notify the requesting hospital in writing of his decision. A hospital aggrieved by an initial action under this paragraph may request reconsideration pursuant to Part 155 of this chapter.

§ 150.716 State control program.

(a) Any State or the District of Columbia, or within such jurisdiction, an agency designated by the governor or mayor of the District of Columbia that has a health care price control program may apply to the Cost of Living Council for authorization to administer the control program within the State in lieu of the controls set forth in §§ 150.701 through 150.722 and administered by the Cost of Living Council. The State agency shall submit to the Cost of Living Council a comprehensive description of its proposed stabilization plan and of its existing or proposed rules for use by the agency in considering requests for price increases for the acute care hospitals under its jurisdiction. The submission to the Council must include an evaluation by the acute care hospitals or associations of acute care hospitals to be covered by the control program.

(b) The governor of a State or the mayor of the District of Columbia may designate an agency to coordinate a health care price control program and assign to a nongovernmental organization the responsibility for administering the program.

(c) To qualify for authorization under this section, a control program must—

(1) have as its objective the substantial limitation of the rising price of health care, and there must be reasonable basis for determination that the objective can be met;

(2) include rules and regulations that are fair and equitable;

(3) contain adequate and assured funds for staffing, commencement of program and operations for a minimum of one year;

(4) provide for participation in policy development by provider groups, acute care hospitals and consumers;

(5) be coextensive in coverage with the Economic Stabilization Program controls for acute care hospitals, or it must be demonstrated that the State program will have substantial impact on health care charges and expenses;

(6) include objective standards by which to measure overall performance;

(7) include uniform standards for measuring individual provider performance;

(8) include procedures for consideration of requests for exception and for

review of original decisions denying such requests;

(9) include provisions to assure compliance (Such provisions may provide for the agency to order refunds, rollbacks, or such other remedies that are reasonable and appropriate to achieve compliance.); and

(10) include a provision for price posting similar to that required in § 150.710.

(d) If the Cost of Living Council approves the proposed stabilization program and rules of an agency, it will notify the agency that when those proposed rules are finally adopted and put into effect by the agency, the Cost of Living Council will issue a certificate of compliance to that agency. If the Cost of Living Council approves existing rules of an agency, it will issue a certificate of compliance to that agency.

(e) An acute care hospital may place in effect, in accordance with the rules of an agency to which a certificate of compliance has been issued, any price increase authorized or allowed to go into effect under the State program.

(f) Except as provided in paragraphs (g) and (h) of this section, actions taken under the program of an agency to which a certificate of compliance has been issued under paragraph (d) of this section are not subject to review by the Cost of Living Council.

(g) Each agency to which a certificate of compliance has been issued under paragraph (d) of this section shall also agree to furnish periodically to the Cost of Living Council such information as the Council may prescribe for the Council's use in determining whether the agency is following its adopted rules and whether the purposes of the Economic Stabilization Program are being served.

(h) The Cost of Living Council may revoke a certificate of compliance issued under paragraph (d) of this section at any time, or take such other action with respect to the certificate as it considers appropriate, if it determines that the rules to which the certificate applies are not being followed or are not serving the purposes of the Economic Stabilization Program. Price increases approved under the State program prior to such revocation or other action shall in no way be affected by such revocation or other action.

(i) Any acute care hospital not subject to a control program certified under this section is subject to this subpart.

§ 150.717 Reporting procedures.

(a) Within 120 days after the end of each fiscal year, each acute care hospital shall file a completed Form CLC–61 signed by the chief executive officer, the administrator or the chief financial officer with the Office of Health, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508. Each acute care hospital shall, upon request, furnish a copy of the completed Form CLC–61 to third party payors.

(b) Each acute care hospital which, pursuant to § 150.713(a)(2), is authorized to establish new charges for services or property resulting from a capital expenditure and to adjust its charges and expenses, is required to file the following information with its annual report for each year prior to the second full fiscal year after the service or property was first made available to patients:

(1) Statement of incurred expenses attributable to the operating expenses directly related to the capital expenditure, including interest and depreciation;

(2) Statement of the method of application of § 150.709 to establish new charges for services and property to obtain the projected level of revenues required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation.

§ 150.718 Self-monitoring.

Acute care hospitals are urged to monitor their own compliance with the regulations of this subpart by the quarterly preparation and review of Form CLC–61, and in accordance with any guidelines promulgated by the Council for the purposes of enhancing initiatives of self-compliance.

§ 150.719 Prohibition.

No acute care hospital subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this title.

§ 150.720 Remedies for non-compliance.

(a) In addition to any remedies provided in Part 155, if the Council determines that:

(1) The limitations of charges contained in § 150.705, § 150.706, or § 150.707 have been exceeded and no exception has been granted, the Council may order—

(i) the reduction of charges to compensate for those charges made in excess of the limitations; or

(ii) The reduction of charges to assure that total charges will not exceed the limitations contained in § 150.705, § 150.706, or § 150.707; or

(iii) the refund to all charge payors of an amount equal to that portion of the excess allocable to charge paying patients (the amount to be refunded or credited to an account shall be allocated on a pro rata basis—each charge multiplied by the percent of excess over total charges); or

(iv) any other action which is reasonable and appropriate to cause the remission of such excess charges, or

(v) any combination of actions under this paragraph (a)(1);

(2) the limitations on total inpatient reimbursed expenses contained in §§ 150.705 and 150.706 have been exceeded, and the total inpatient operating expenses per admission have increased over the preceding fiscal year's total inpatient operating expenses per admission by a percentage greater than the percentage increase allowable for reimbursements, the Council may order—

(i) the amount of the excess of total inpatient reimbursed expenses to be credited to settlements with cost reimbursers on a pro rata basis; or

(ii) any other action which is reasonable and appropriate to cause the restitution of such excess reimbursed expenses.

(3) The limitations on prospective rate revenues contained in §§ 150.705 and 150.706, have been exceeded, and no exception has been granted, the Council may order—

(i) The reduction of prospective rate payments to compensate for those payments made in excess of the limitations; or

(ii) The reduction of prospective rate payments to assure that total payments will not exceed the limitations contained in §§ 150.705 and 150.706; or

(iii) Any other action which is reasonable and appropriate to cause the remission of such excess prospective rate revenues; or

(iv) Any combination of actions under this paragraph (a)(3).

(b) Except as otherwise provided in this subpart, if an acute care hospital determines that it has exceeded the applicable limitations of § 150.705, § 150.706, or § 150.707, unless an exception request is pending, the granting of which would eliminate the violation, the hospital shall submit together with its annual report filed pursuant to § 150.717, a plan for achieving compliance with these sections to the Office of Health, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508. If the hospital has such an exception request pending at the time of filing the annual report pursuant to § 150.717, the compliance plan required by this paragraph shall be filed with the Council within 20 days of receipt by the hospital of a decision and order denying the exception request or granting an amount less than that necessary to eliminate the violation. Such a compliance plan may provide for a reduction of charges or reimbursed expenses, a stipulation of no charge or reimbursed expense increases for a certain period of time, refunds, or any other action which is reasonable and appropriate to cause the remission of such excess charges or reimbursed expenses, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

§ 150.721 Communications with the Cost of Living Council.

Acute care hospitals should address all notices and requests made to the Council under this subpart to the Office of Health, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

§ 150.722 Savings and severability.

(a) If this subpart is held invalid with respect to any acute care hospital, Subpart O of this part in effect on December 31, 1973 shall govern the acute care hospital.

(b) If any provision of §§ 150.701 through 150.722 applicable to acute care

hospitals is held invalid, the other provisions of those sections shall remain in full force and effect.

MEDICAL PRACTITIONERS AND MEDICAL LABORATORIES

§ 150.730 Scope and applicability.

(a) Effective January 1, 1974, §§ 150.730 through 150.745 apply to each medical practitioner and, except for §§ 150.734(e), 150.735, and 150.737, to each medical laboratory.

(b) A medical practitioner or a medical laboratory which is under contract to one or more Health Maintenance Organizations and which derives at least 75 percent of its aggregate annual revenues from services rendered to Health Maintenance Organization members pursuant to a contract, is subject to §§ 150.748 through 150.764 governing Health Maintenance Organizations.

(c) To the extent that §§ 150.730 through 150.745 of this subpart may conflict with other provisions of this part, §§ 150.730 through 150.745 shall prevail.

§ 150.731 Continued applicability of existing regulations.

Each medical practitioner and each medical laboratory is subject to Subpart O of this part through December 31, 1973, and the prices in effect on December 28, 1973 shall be deemed to be in effect on December 31, 1973 for purposes of forming the base on which the allowances permitted in this subpart are calculated.

§ 150.732 Definitions.

For purposes of this subpart and in addition to the definitions in § 150.31:

"Aggregate annual revenues" means the total revenues for the fiscal year concerned derived from the provision of all medical services and properties, including—

(1) Revenues from daily patient services (surgery, laboratory and X-ray, office visits, home and hospital calls, and similar services);

(2) Revenues from the sale of medicines and drugs; and

(3) Revenues from other services, sales, and activities directly related to the provision of health care.

"Base period" means, at the option of the medical practitioner, any two of that practitioner's fiscal years ending after August 14, 1968, and prior to a fiscal year for which compliance is being measured. However, a practitioner who was authorized under the provisions of 6 CFR 130.110 in effect on August 12, 1973, to include in its base period a fiscal year which ended before August 15, 1968, may continue to include that fiscal year in its base period.

"Base period revenue margin" means the ratio that the base period net revenues (aggregate annual revenues less total operating expenses directly related to the provision of health care) bears to the base period aggregate annual revenues, computed in accordance with generally accepted accounting principles consistently applied. For the purpose of this definition, revenues and operating expenses derived from the provision of health care under a contract with a Health Maintenance Organization may be excluded in the computation of base period revenue margin.

"Class of purchasers" means a category or a group of purchasers to which a medical practitioner or medical laboratory has charged a comparable price for a comparable service or property pursuant to a customary price differential among those groups or categories of purchasers.

"Customary price" means the price which was or would be charged in a substantial number of transactions to a class of purchasers for a service or property.

"Medical laboratory" means a firm or that part of a firm primarily engaged in providing professional analytic or diagnostic laboratory services to a provider of health care or to a patient on prescription of a medical practitioner. For purposes of this definition, the term does not include a medical practitioner, a dental laboratory, or a medical laboratory owned or operated by an acute care hospital or a long term care institution.

"Medical practitioner" means a physician, surgeon, osteopathic physician, dentist, dental surgeon, or podiatrist. A medical practitioner may be an individual practicing alone, or a group of individuals practicing together in the form of a professional partnership, association, or corporation.

"New market" means a location in a Medicare locality, as determined under 20 CFR 405.505, other than the Medicare locality in which a medical practitioner or medical laboratory had been providing health care services or property, or, with the prior approval of the Council by exception, a different location within the same Medicare locality.

"New service or property" means a service or property which the medical practitioner or medical laboratory did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of this definition, a change in appearance, arrangement, combination, method or technology of providing a service, or certification by a medical specialty board, does not create a new service or property.

"Price" means any fee or charge for the sale or lease of any service or property, regardless of form.

"Revenue margin" means the ratio that net revenues (aggregate annual revenues less total operating expenses directly related to the provision of health care) bears to aggregate annual revenues for a fiscal year, computed in accordance with generally accepted accounting principles consistently applied. For the purpose of this definition, revenues and operating expenses derived from the provision of health care under a contract with an HMO may be excluded in the computation of revenue margin.

§ 150.733 Prior commitments.

(a) Notwithstanding any other provision of this subpart, all prospective decisions, interpretations, and exceptions authorizing a minimum dollar increase issued prior to January 17, 1974, to a specific medical practitioner or medical laboratory covered under this subpart remain in force.

(b) For purposes of calculating the first year's allowances authorized under this subpart, each medical practitioner and medical laboratory shall use no more than the unused portion of the maximum authorized allowable percentage price increase available on December 28, 1973, for the two control years under the noninstitutional providers of health services sections of Subpart O of this part. The maximum authorized allowable percentage price increase for purposes of this paragraph is 5 percent, computed on an aggregate weighted basis in accordance with the formula specified in § 150.734 (d).

§ 150.734 Price increase limitations.

(a) Except as provided in paragraph (b) of this section with respect to a fixed dollar amount charged under a contract with another health care provider and except for prices charges under a contract with a new HMO, a medical practitioner or medical laboratory may not increase any of its prices for services and property related to the provision of health care in excess of the following limitations:

(1) The customary prices for all services and property may not exceed 104 percent, computed on an aggregate weighted basis using the immediately preceding calendar year's billings, of the customary prices for all services and property lawfully in effect on the last day of the immediately preceding calendar year; and

(2) The price charged for any service or property may not exceed 110 percent of the customary price lawfully in effect for that service or property on the last day of the immediately preceding calendar year. However, price increases need not be limited to amounts less than $1.00.

(3) For purposes of paragraph (a) of this section, a "price" in a percentage of gross or net revenue contract with another health care provider is the amount determined by multiplying the percentage specified therein times the appropriate unit price, i.e. gross or net revenue price, of each service performed or product provided.

(b) The fixed dollar amount specified in a contract with another health care provider for a service or property, other than on a fee-for-service basis but including a maximum or minimum guarantee, may not exceed 106.2 percent of the dollar amount specified in the contract for the same service or property in the preceding contract year.

(c) Notwithstanding the limitations of paragraphs (a) (1) and (b) of this section, any unused price increase to which a medical practitioner or medical laboratory is lawfully entitled (including those accruing prior to the effective date of this regulation) may be accumulated for more than one calendar year and carried

forward for use in a subsequent year, but not compounded.

(d) (1) The formula for determining price increases computed on an aggregate weighted basis under paragraph (a) (1) of this section, herein referred to as %AWPI, is as follows:

$$\%AWPI=\Sigma\frac{P_2-P_1}{P_1}\times\frac{B_1}{B_2}\times 100$$

where,

P_1=the customary price lawfully in effect on the last day of the immediately preceding calendar year for a service or property.
P_2=the highest customary price charged or to be charged during the current calendar year for that service or property.
B_1=the actual gross billings during the immediately preceding calendar year for that service or property.
B_2=the total gross billings during the immediately preceding calendar year for all services and property.
Σ=the sum of.

(2) If a medical practitioner or medical laboratory elects not to increase a price for any service or property over the price lawfully in effect for that service or property on the last day of the immediately preceding calendar year in excess of that percentage increase authorized under paragraphs (a) (1) and (c) of this section, the price increases may be implemented without regard to the computation of %AWPI in paragraph (d) (1) of this section.

(3) At the option of a medical practitioner or medical laboratory, the formula for determining %AWPI in paragraph (d) (1) of this section may be restated as follows:

$$\%\ AWPI=\Sigma\ \%\ I\times\frac{G_1}{B_2}$$

where,

$\%I$=the highest percentage price increase for any service or property within a group of similar or related services or property.
G_1=the actual gross billings during the immediately preceding calendar year for that group of similar or related services and property.

(e) A dentist may increase the price of a dental item in which gold or silver is used, without regard to paragraphs (a) (1) and (a) (2) of this section, to reflect the actual increase since November 14, 1971, in the cost of gold or silver used in that item on a dollar-for-dollar basis, without rounding off. Any actual decrease in the cost of gold or silver used in that item shall likewise be reflected, dollar-for-dollar, in the price of that item.

§ 150.735 Revenue margin limitation.

(a) In addition to the limitations set forth in § 150.734, if a medical practitioner increases any price, except for a price charged under a contract with a Health Maintenance Organization, as defined in § 150.750, over the price lawfully in effect on the last day of the immediately preceding fiscal year, his revenue margin may not exceed his base period revenue margin during—

(1) that fiscal year, if the price is increased during the first fiscal quarter, or

(2) that fiscal year and the succeeding fiscal year, if the price is increased subsequent to the first fiscal quarter.

(b) If a medical practitioner has incorporated or has abandoned its corporate status during or subsequent to the base period, the medical practitioner shall determine its revenue margin and base period revenue margin under paragraph (a) of this section by excluding from operating expenses for each year of incorporation all amounts of salary and the amount of deferred compensation in excess of the amount permitted to be deferred under the self-employed retirement plan (the Keogh Plan), authorized by 26 U.S.C. 401, for any individual medical practitioner who is an owner-employee as defined at 26 U.S.C. 401(c) (3).

(c) If a medical practitioner is a professional partnership, the partnership shall determine its revenue margin and base period revenue margin under paragraph (a) of this section by excluding from operating expenses any salaries paid to employees who are medical practitioners. For purposes of this paragraph employees who are medical practitioners shall include only those earning more than 50 percent of their medical practice income from the partnership.

§ 150.736 New services or property.

(a) The price for a new service or property or for a service or property being provided in a new market shall be determined as follows:

(1) The price of the service or property shall be the customary price charged by a substantial number of other comparable medical practitioners or medical laboratories providing a comparable health care service or property in the same marketing area; or

(2) If comparable health care services or property are not provided by other comparable medical practitioners or medical laboratories, then the medical practitioner or medical laboratory may use any other pricing practice commonly used by other comparable medical practitioners or medical laboratories engaged in comparable medical practice in the same marketing area.

(b) A medical practitioner or medical laboratory may use the special pricing rules of this section at any time within twelve months after the service or property described in paragraph (a) was first made available to patients. A medical practitioner or medical laboratory may not raise its charges for such a service or property when more than twelve months have elapsed since the service or property was first made available to patients.

(c) The Council may modify, defer, suspend or disapprove any charges implemented pursuant to this section if the Council finds that such charges are inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program.

§ 150.737 Group practice.

(a) The price with respect to the furnishing of a service or property when one medical practitioner joins or forms a group with another medical practitioner or practitioners shall be—

(1) The price previously in effect for each of the medical practitioners; or

(2) The highest price at or above which all medical practitioners to be in the group charged for the service or property in at least 25 percent of their transactions within the same market with the same class of purchasers during the immediately preceding calendar year.

(b) The revenue margin and base period revenue margin, when one medical practitioner joins or forms a group with another medical practitioner or practitioners, shall be combined and reconciled consistent with generally accepted accounting principles.

§ 150.738 Price schedules.

Each medical practitioner and medical laboratory shall maintain at each facility a schedule showing the customary prices in effect on December 31, 1973, for each class of purchasers for services or property which comprise 90 percent of aggregate annual revenues, each subsequent change (if any) in the price of these services or property, and the date the change of price was made. If price increases are computed on an aggregate weighted basis under § 150.734(d) (1) or (3), the weights for each service or property or group of related services or property whose prices are increased shall also be shown on the schedule. The schedule shall be made available for public inspection, and a copy shall promptly be furnished or mailed to any third party payor or Cost of Living Council representative upon request. Each practitioner and medical laboratory shall post a conspicuous and easily readable sign in each facility stating the availability and location of the schedule. No price increase may be implemented before the increase has been entered on the schedule as required by this section.

§ 150.739 Exceptions.

(a) Unless a medical practitioner or medical laboratory has requested and received an exception from the Cost of Living Council for the purpose of preventing or correcting a serious hardship or gross inequity, the medical practitioner or medical laboratory shall not implement a price increase in excess of the limitations set forth in these sections and the medical practitioner shall not exceed the revenue margin limitation set forth in § 150.735. Subject to the general requirements relating to exceptions imposed by Part 155 of this chapter, the Council shall consider all relevant factors in reviewing an exception request such as:

(1) For the revenue margin limitation—

(i) whether the base period is substantially unrepresentative of the petitioner's current practice;

(ii) whether a demonstrably significant increase in the amount of medical care has been delivered (including as one measurement, the additional total hours worked); or

(iii) whether effective cost containment initiatives have been undertaken by the medical practitioner.

(2) For the price increase limitations—

(i) whether the prices lawfully in effect prior to the effective date of these

regulations are substantially unrepresentative of the petitioner's current practice;

(ii) whether a significant imbalance exists between the costs and a price charged for a specific service or property;

(iii) whether the medical practitioner is contemplating a move to an underserved area where medical care is badly needed.

(b) In the absence of the factors enumerated in paragraph (a)(2) of this section, it shall be presumed that the petitioner's revenue margin must not be increasing before factors such as the following are considered for an exception request for the price increase limitations:

(1) Substantial government mandated cost increases;

(2) Cost increases related to substantial and significant improvements in the quality of service or property already provided;

(3) Current operating revenues inadequate to meet current operating expenses;

(4) Significant change in amount of bad debts; or

(5) Increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 152.32 of this chapter, or below minimum wage rates imposed by Federal or State statutes of general application.

(c) Requests for exception submitted by a medical practitioner or medical laboratory may be considered to have been provisionally approved sixty days after the date of filing of the request with the Council. The Council shall inform the medical practitioner or medical laboratory promptly by written notice of the date of filing and the docket number of the request for exception. During the 60-day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60-day period from continuing to run if the documents submitted by the medical practitioner or medical laboratory are incomplete or erroneous. In any case in which the Cost of Living Council issues a suspense notice and requests additional or corrected information from the medical practitioner or medical laboratory, the 60-day period shall resume running only after the Council has informed the medical practitioner or medical laboratory that the information has been received and accepted. The price increases made under the authority of this section shall be applied only to services or property provided to patients by the medical practitioner or medical laboratory after the 60-day period has expired. If after implementation of an increase pursuant to the expiration of the 60-day period, the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the medical practitioner or medical laboratory shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable from the last day of the 60-day period through the date of the Council's determination of the request; nor shall the medical practitioner or medical laboratory be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of provisional approval granted pursuant to the operation of this section.

§ 150.740 Prohibition.

No medical practitioner or medical laboratory subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this title.

§ 150.741 Remedies for non-compliance.

(a) In accordance with Subpart E of Part 155 of this chapter, and in addition to any remedies provided therein, if the Council determines that either the revenue margin limitation contained in § 150.735 or the price increase limitations contained in § 150.734 have been exceeded, and no exception has been granted, the Council may order—

(1) the reduction of prices to compensate for the amount by which the limitations were exceeded; or

(2) the reduction of prices to assure that the medical practitioner is in compliance; or

(3) the refund of an aggregate amount equal to the amount by which the limitations were exceeded (the amount to be refunded or credited to an account shall be allocated on a pro rata basis); or

(4) any other action which is reasonable and appropriate to cause the remission of such excess prices; or

(5) any combination of actions under paragraphs (a)(1), (2), (3), or (4) of this section.

(b) If a medical practitioner has exceeded the revenue margin limitation under § 150.735 or a medical practitioner or medical laboratory has exceeded any price increase limitation under § 150.734, the medical practitioner or medical laboratory shall submit a plan for achieving compliance with these sections to the Office of Health, Cost of Living Council, 2000 M Street N.W., Washington, D.C. 20508. Such a compliance plan may provide for a reduction of prices, a stipulation of no price increases for a certain period of time, the refund of revenues, or any other action which is reasonable and appropriate to cause the remission of such excess prices, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

§ 150.742 Communications with the Cost of Living Council.

Medical practitioners and medical laboratories should address all notices and requests made to the Council under this subpart to the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

§ 150.743 Reporting procedures.

Medical practitioners and medical laboratories are encouraged to make their computations and monitor compliance with §§ 150.734 and 150.735 of this part on Form CLC–81. Each medical practitioner and medical laboratory shall file a completed Form CLC–81 with the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508 within 30 days of a request therefor by the Cost of Living Council. The completed Form CLC–81 must be signed by the medical practitioner, a designated partner, the chief executive officer, the administrator, or the chief financial officer, and submitted together with such additional data as the Council may request.

§ 150.744 Retention and availability of records.

(a) Each medical practitioner and medical laboratory subject to this subpart shall maintain such records as are sufficient to establish the compliance status of the practitioner or laboratory with respect to this title.

(b) Records required to be maintained under paragraph (a) of this section shall be made available for inspection at any time upon the request of an officer or employee of the Council or of any other person authorized to represent the Council.

(c) Each medical practitioner or medical laboratory required to maintain records under this section shall retain such records for at least 3 years after the last day of the fiscal year in which the transactions or other events recorded in such records occurred or the property was acquired by that practitioner or laboratory.

§ 150.745 Savings and severability.

(a) If this subpart is held invalid with respect to any medical practitioner or medical laboratory, Subpart O of this part in effect prior to the effective date of Subpart R shall govern the medical practitioner or medical laboratory.

(b) If any provision of §§ 150.730 through 150.745 applicable to medical practitioners and medical laboratories is held invalid, the other provisions of those sections shall remain in full force and effect.

Health Maintenance Organizations (HMOs) and Health Maintenance Organization Providers of Health Care

§ 150.748 Scope and applicability.

Effective January 1, 1974, §§ 150.748 through 150.764 apply to each Health Maintenance Organization (HMO) and each HMO provider of health care that is a medical practitioner or a medical laboratory. Sections 150.748 through 150.764 apply to each HMO provider of health care that is an acute care hospital or long term care institution beginning with the effective date of these rules for acute care hospitals and long term care institutions as established in §§ 150.701 and 150.769 of this subpart.

§ 150.749 Continued applicability of existing regulations.

Except as otherwise provided in § 150.748, each HMO provider of health care whose current fiscal year begins prior to January 1, 1974 is subject to Subpart O of this part in effect on December 31, 1973, until the completion of its current fiscal year.

§ 150.750 Definitions.

For purposes of this subpart and in addition to the definitions in § 150.31:

"Health maintenance organization" (HMO) means a private or public organization which provides, either directly or indirectly through arrangements with others, reasonably comprehensive health care services to HMO members primarily on a per capita pre-payment basis, and which requires that a medical practitioner or group of medical practitioners who are under contract with an HMO share in the financial risk for the provision of health care services, and that members served are broadly representative of the general population. If an HMO operates in more than one geographical region, then for the purposes of this definition, the HMO may elect to treat each region as a separate HMO.

"HMO member" means a person entitled to the provision of health care by virtue of a prepaid contract or for stipulated consideration with an HMO.

"HMO provider of health care" means:

(1) An acute care hospital which owns or operates an HMO or which is owned or operated by or is under contract to an HMO, and which derives at least 75 percent of its total inpatient operating charges from services rendered to HMO members;

(2) A medical practitioner or a medical laboratory which is under contract to an HMO and which derives at least 75 percent of its aggregate annual revenues from services rendered to HMO members; or

(3) A long term care institution which owns or operates an HMO or which is owned or operated by or under contract to an HMO and which derives at least 75 percent of its realized revenues from services rendered to HMO members.

"New HMO" means an HMO that has been providing health care pursuant to a contract for prepaid services for less than four years and has fewer than HMO 35,000 members at the end of the last completed fiscal year.

"Prenotifier" means an HMO that had more than 60,000 HMO members at any time during the calendar year preceding the effective date of a proposed rate increase.

"Rate" means a unit charge which produces a premium amount to be charged or paid for the providing of health care through an HMO, calculated in accordance with a ratemaking practice or formula, or developed under a classification system.

"Rate increase" means any increase in the premium or co-payments, a restriction in coverage, an increase in a deductible level, or any similar reduction in benefits to HMO members without a corresponding reduction in rates.

"State regulatory agency" means any commission, board or other legal instrumentality of the State or District of Columbia that has jurisdiction over rates or practices of HMOs in the State or the District of Columbia.

§ 150.751 Prior commitments.

(a) Except as provided in paragraph (b), all interpretations, and decisions or exceptions having prospective effect, issued under the Economic Stabilization Act prior to January 17, 1974, to Health Maintenance Organizations or HMO providers of health care covered under this subpart remain in force.

(b) This section shall not apply to any exception issued under Subpart O of this part authorizing a dollar increase to any HMO provider of health care that is subject to Subpart R of this part pursuant to § 150.701 or § 150.769.

(c) Each HMO provider of health care that is an acute care hospital may annualize the charge increases and charges for new services allowed and implemented under Subpart O of this part in effect on the last day of the hospital's last fiscal year under Subpart O of this part, for purposes of calculating the base on which allowances are authorized under this subpart.

(d) Each HMO provider of health care that is a medical practitioner or a medical laboratory may add to the first year's allowances authorized under this subpart no more than the unused portion of the maximum authorized allowable percentage price increase available on December 28, 1973, for the two control years under the noninstitutional providers of health services sections of Subpart O of this part. The maximum authorized allowable percentage price increase for purposes of this paragraph is 5 percent, computed on an aggregate weighted basis.

(e) For purposes of calculating the base on which allowances are authorized under this subpart, each HMO provider of health care that is a long term care institution may use the average per diem charges lawfully in effect for each class of purchasers and level of care on the last day of the institution's last fiscal year under Subpart O of this part and, for each class of purchasers and level of care for which the institution is paid under a cost reimbursement arrangement, the total authorized cost reimbursements expressed on a per diem basis determined for the institution's last fiscal year under Subpart O of this part.

§ 150.752 Criteria for rate increases.

(a) Except as provided in paragraphs (b) and (c) of this section, each rate increase put into effect by an HMO after December 31, 1973, which would increase the rate above the level in effect on that date, must be consistent with the following criteria:

(1) Actual costs may be used in the customary manner in the ratemaking process.

(2) Factors in the ratemaking process or in the actual determination of the final rate that relate to or reflect changes in claim frequency, occurrence or utilization, or similar changed conditions of risk may be used in accordance with customary practice provided such factors are supported statistically.

(3) Administrative expenses may be loaded on an actual cost basis, if statistically supported. If factors for administrative expenses are loaded as a percentage of the rate, they must be limited to a maximum of a 5 percent increase in the dollar amount represented by the loading.

(4) Any profit portion of the rate, whether loaded as a percentage of the rate or a dollar amount per contract, must be limited to a 2.5 percent increase in the dollar amount represented by the loading for the profit that was used in the prior rate. For purposes of this section, any portion of the rate which is classified as a contribution to reserve, contingency reserve or similar element where a profit as such is not a part of the ratemaking process, shall be treated as the profit provision.

(5) Factors in the ratemaking process anticipating costs or price increases may be used, if statistically supported, in accordance with the customary practice in the ratemaking process, subject to the following restrictions:

(i) For that portion of the factor that represents the provision of inpatient care in an acute care hospital, if the contract between the HMO and the acute care hospital is on a percentage of charge or fixed charge per admission basis, the increase is limited to 7.5 percent per admission per year; if the contract is on a per diem or charge basis, it shall be recomputed on a per admission basis and subject to the per admission contract limitation; if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 9 percent per fixed dollar amount or per capita per year; or if the acute care hospital owns or operates an HMO or is owned or operated by the HMO, the increase is limited to 9 percent of its inpatient operating expenses per year.

(ii) For that portion of the factor that represents the provision of outpatient care in an acute care hospital or long term care institution, if the contract is on a charge per procedure basis, the increase is limited to 6 percent per procedure per year; or if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 9 percent per year.

(iii) For that portion of the factor that represents the provision of health care by a medical practitioner or medical laboratory, if the contract is on a fee-for-service or a percentage of gross or net revenue basis, the increase is limited to 4 percent per charge per year; or if the contract is on a fixed dollar amount or per capita basis, the increase is limited to 6.2 percent per year. For purposes of the preceding sentence, a "charge" in a percentage of gross or net revenue contract is the amount determined by multiplying the percentage specified therein times the appropriate unit charge, i.e.,

gross or net revenue charge, of each service performed or product provided.

(iv) For that portion of the factor that represents the provision of inpatient care by a long term care institution, the increase is limited to 6.5 percent in average realized revenues per diem per year.

(b) Increases in charges by an HMO for services and property not covered by a rate are not subject to any limitations as long as the anticipated revenues from such sources are offset against the rate that otherwise would be permissible.

(c) A new HMO is not subject to the limitations set forth in this section.

§ 150.753 Change in ratemaking formula.

No HMO may change a ratemaking formula, procedure or technique, or other element in the ratemaking process unless—

(a) the change will not result in an overall rate increase; or

(b) the change is necessitated by legislation or regulation promulgated in a particular jurisdiction; or

(c) written approval has been granted by the Cost of Living Council.

§ 150.754 Prenotification.

Each prenotifier shall file a written notice on Form CLC–27 with the Cost of Living Council and the appropriate State regulatory agency of the State to which the rate increase is applicable or the State regulatory agency of the HMO's domicile when a rate increase is proposed for use in more than one State, of each proposed rate increase in excess of 5 percent which affects $500,000 or more of its annual revenues under the existing rate. Each HMO submitting a notice under this section shall certify to the Cost of Living Council and the State regulatory agency that the proposed rate increase conforms to the requirements of §§ 150.752 and 150.753. The certification must be signed by the chief executive officer of the prenotifier or by an individual to whom he has delegated that authority. A copy of the delegation must be filed with the Cost of Living Council.

§ 150.755 Certification by State regulatory agency.

A State regulatory agency may agree, in writing, with the Cost of Living Council to certify that the rate increases of which it has received prenotification under § 150.754 are or are not in compliance with §§ 150.752 and 150.753. Each agency entering into such agreement with the Cost of Living Council shall furnish its certification to the Council (with a copy to the HMO) within 20 days after it receives the notice. A certification by an agency under this section is prima facie evidence that the proposed rate increase is or is not in compliance with §§ 150.752 and 150.753.

§ 150.756 Self-certification.

Whenever a prenotifier cannot obtain a certification of a rate increase from a State regulatory agency in accordance with § 150.755 because:

(a) There is no State regulatory agency;

(b) The State regulatory agency concerned has not agreed to furnish certification under that section; or

(c) The State regulatory agency did not act upon the filing within the period required under § 150.755, the prenotifier shall immediately notify the Cost of Living Council that it cannot obtain the certification and may request the Council to act upon the certification filed with it under § 150.754.

§ 150.757 Federal employees health benefits law.

The Cost of Living Council designates the U.S. Civil Service Commission to act as certifying agent for contracts of HMOs under the Federal Employees Health Benefits Law (5 U.S.C., Chapter 89). Each prenotifier that proposes to increase rates under a Federal Employees Health Benefits contract by more than 5 percent shall file notice thereof with the Cost of Living Council and the Civil Service Commission. The Civil Service Commission shall, with respect to each such proposed increase, certify to the Cost of Living Council that the increase is or is not in compliance with § 150.752 and that certification is prima facie evidence of compliance or noncompliance. A rate certified by the Civil Service Commission as being in compliance may go into effect on any date, specified by that Commission, that is at least 10 days after the date of the certification, and at least 30 days after the date of prenotification.

§ 150.758 Cost of Living Council actions.

(a) With respect to any rate increase certified by a State regulatory agency under § 150.755, or self-certified by a prenotifier, the Cost of Living Council may, within 30 days after the State regulatory agency received the prenotification, or within 30 days after the Cost of Living Council receives the prenotification under § 150.754, take one or more of the following actions:

(1) Require the HMO to furnish additional information regarding the increase.

(2) Delay the effective date of the increase pending further Council action.

(3) Suspend all or part of the effect of the increase, pending further action by the Cost of Living Council or by the State regulatory agency.

(4) Limit, refuse, rescind, reduce, or modify the increase.

(b) If the Cost of Living Council does not act upon a request under this section before the end of the thirtieth day as described above, the increase may go into effect. However, in any case in which that period would otherwise end on a Saturday, Sunday, or Federal holiday, it will end at the close of the next succeeding workday. However, if after implementation of the rate increase the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the rate increase. A rate increase prenotified to a State regulatory agency which has been certified by that agency as being not in compliance with §§ 150.752 and 150.753 may not be placed into effect unless the written approval of the Cost of Living Council has been granted.

§ 150.759 HMO rates subject to State laws.

Approval of an HMO rate increase or rating formula under these sections does not authorize the use of a rate or formula in contravention of any applicable State law.

§ 150.760 Reporting.

Each HMO shall file an annual report on Form CLC–27 with the Cost of Living Council with a copy to the appropriate State regulatory agency at the time it normally releases its annual reports, but in any event no later than 120 days after the end of the fiscal year. This report must be signed by the chief executive officer of the HMO or by an individual to whom he has delegated that authority. A copy of the delegation must be filed with the Cost of Living Council.

§ 150.761 HMO providers of health care.

(a) An HMO provider of health care that is an acute care hospital is limited to—

(1) In the provision of outpatient care—

(i) An increase of 6 percent per year in its charges, computed on an aggregate weighted basis, if the contract between the HMO and the acute care hospital is on a charge per procedure basis; or

(ii) An increase in its charges of 9 percent per year, if the contract is on a fixed dollar amount or on a per capita basis.

(2) In the provision of inpatient care—

(i) An increase in its charges of 7.5 percent per admission per year, if the contract is on a percentage of charge or fixed charge per admission basis. Any contract on a per diem or charge basis shall be recomputed to a per admission basis and is subject to the per admissions limitation; or

(ii) An increase in its charges of 9 percent per capita per year, if the contract is on a per capita basis; or

(iii) An increase in its inpatient operating expenses of 9 percent per capita per year if that acute care hospital owns or operates the HMO or is owned or operated by the HMO.

(b) An HMO provider of health care that is a medical practitioner or a medical laboratory is limited to:

(1) An increase in its charges of 6.2 percent per year if remuneration under the contract is on a fixed dollar amount or on a per capita basis; or

(2) An increase of 4 percent per year in its prices, computed on an aggregate weighted basis using the preceding calendar year's billings, for all services and property, if the contract between the HMO and the practitioner or laboratory is on a fee-for-service or percentage of gross or net revenue basis. For purposes of the preceding sentence, a "price" in a percentage of gross or net revenue contract is the amount determined by multiplying the percentage

specified therein times the appropriate unit price, i.e., gross or net revenue price, of each service performed or product provided.

(c) An HMO provider of health care that is a long term care institution is limited to:

(1) In the provision of outpatient care—

(i) An increase of 6 percent per year in its charges, computed on an aggregate weighted basis, if the contract between the HMO and the long term institution is on a charge per procedure basis; or

(ii) An increase in its charges of 9 percent per year, if the contract is on a fixed dollar amount or on a per capita basis.

(2) In the provision of inpatient care, an increase of 6.5 percent per year in its average realized revenues per diem.

(d) Increases in charges by an HMO provider of health care for services and property not paid for by an HMO are not subject to any limitations as long as the anticipated revenues from such sources are offset against the limitations of paragraphs (a), (b), and (c) of this section.

(e) An HMO provider of health care is also subject to the provisions of §§ 150.709, 150.713, 150.714(c), 150.736, 150.778, 150.781, and 150.782(c) of this subpart relating to acute care hospitals, medical practitioners and medical laboratories, and long term care institutions, as appropriate.

(f) An HMO provider of health care is excluded from the limitations of paragraphs (a), (b), and (c) of this section if it is providing health care to a new HMO.

§ 150.762 Prohibition.

No Health Maintenance Organization or HMO provider of health care subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this title.

§ 150.763 Retention and availability of records.

(a) Each Health Maintenance Organization and HMO provider of health care subject to this subpart shall maintain such records as are sufficient to establish the compliance status of the HMO or HMO provider of health care with respect to this title.

(b) Records required to be maintained under paragraph (a) of this section shall be made available for inspection at any time upon the request of an officer or employee of the Council or of any other person authorized to represent the Council.

(c) Each HMO and HMO provider of health care required to maintain records under this section shall retain such records for at least 3 years after the last day of the fiscal year in which the transactions or other events recorded in such records occurred or the property was acquired by the HMO.

§ 150.764 Savings and severability.

(a) If this subpart is held invalid with respect to any HMO or HMO provider of health care, Subpart M or Subpart O of this part in effect on December 31, 1973 shall govern the HMO or HMO provider of health care.

(b) If any provision of §§ 150.748 through 150.764 of this subpart applicable to HMOs and HMO providers of health care is held invalid, the other provisions of these sections shall remain in full force and effect.

LONG TERM CARE INSTITUTIONS

§ 150.769 Scope and applicability.

(a) Sections 150.769 through 150.788 apply to each long term care institution whose fiscal year commences on or after January 1, 1974. However, any long term care institution may make an irrevocable election:

(1) To be governed by this subpart if its current fiscal year commenced on or after August 15, 1973, but before January 1, 1974; or

(2) To be governed by Subpart O of this part in effect on December 31, 1973, if its fiscal year commences on or after January 1, 1974, but before April 1, 1974. In no event may a long term care institution elect to be governed by Subpart O if its fiscal year commences on or after April 1, 1974.

(b) No election made under paragraph (a) (1) or (2) of this section by any long term care institution is valid unless the institution files with or mails to the Cost of Living Council written notice of its specific election. The written notice must be filed with the Council not later than April 1, 1974, or mailed to the Council by certified or registered mail (return receipt requested) postmarked no later than April 1, 1974. No notice is required if the long term care institution does not make an election referred to in paragraph (a) (1) or (2) of this section.

(c) Notwithstanding paragraph (a) of this section, a long term care institution which is owned or operated by or under contract to a Health Maintenance Organization and which derives at least 75 percent of its gross inpatient operating revenues from services rendered to enrolled participants, is subject to this section and to §§ 150.748 through 150.764 governing Health Maintenance Organizations.

(d) To the extent that §§ 150.769 through 150.788 of this subpart may conflict with other provisions of this part, §§ 150.769 through 150.788 shall prevail.

§ 150.770 Continued applicability of existing regulations.

Except as otherwise provided in § 150.769, each long term care institution whose current fiscal year begins prior to January 1, 1974, is subject until the completion of its current fiscal year to Subpart O of this part in effect on December 31, 1973.

§ 150.771 Definitions.

For purposes of this subpart and in addition to the definitions in § 150.31:

"Average realized revenues per diem" means the realized revenues for each long term care institution's class of purchasers for each level of care divided by the number of patient days of care provided for the same level of care for the same class of purchasers. However, the number of patient days for which revenues were not realized may be excluded in determining the average realized revenues per diem.

"Capital expenditure" means an expenditure defined as a capital expenditure in 42 CFR 100.103(a) of the regulations implementing section 1122 of the Social Security Act as added by section 221(a) of the Social Security Amendments of 1972 (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)).

"Design development" means the documentation which describes the size and character of the construction project, including:

(1) The site plan indicating the nature of the improvements such as topography, utilities, and streets;

(2) Plans, elevations and sections required to describe the project with respect to structural, mechanical and electrical systems;

(3) Schedules and lists required to identify all fixed equipment with respect to character, size, function and finishes of interior spaces; and

(4) A general description of the types and requirements of the materials to be used.

"Levels of care" means the following:

(1) For Medicare patients—skilled nursing care and hospital care.

(2) For Medicaid patients—those categorizations of care specified by each State Title XIX (42 USC 1395aa) agency for reimbursement purposes.

(3) For all other patients—existing classifications of levels of care for patients, specifically identified in the accounting practices of the institution during the preceding fiscal year, including acute care.

"Long term care institution" means:

(1) A licensed hospital that is not an acute care hospital as defined in § 150.703.

(2) An institution that is certified for participation in Medicare as a skilled nursing facility.

(3) An institution that participates in Medicaid as a skilled nursing facility or intermediate care facility.

(4) Any other skilled nursing or intermediate care facility.

(5) The distinct unit of an acute care hospital, for which the hospital maintains separate financial accounts, that provides health care services similar to these specified in items (1) through (4).

For the purposes of this definition, if any housing for the elderly includes as part of its facility a distinct part licensed or certified for the provision of skilled nursing or intermediate care, only such distinct part is included in this definition. As used herein, "housing for the elderly" includes purely residential shelter, and personal and sheltered care institutions that provide health related services as part of a general program of supervision and personal care to residents not in need of substantial, continuous nursing services or medical care. The availability of 24-hour nursing service does not preclude the inclusion of an institution in the definition of "housing for the eld-

erly", unless the primary purpose of the institution, or of a distinct part of the institution, is to provide nursing care on a continuous basis.

"New facility" means a long term care institution which:

(1) Commences operation for the first time, or which has not operated for at least one year prior to its current date of operation; or

(2) Has undergone physical replacement; or

(3) Has undergone major renovation, remodeling or expansion that costs a dollar amount equal to 70 percent of the book value (net of accumulated depreciation) of the property, plant and equipment in service at the end of the fiscal year in which the institution was committed to construction by prior authorization of the institution's governing board, or $100,000, whichever is greater, and which

(i) Receives a "new facility" determination in response to a request filed with the Council prior to March 20, 1974, under Cost of Living Council Notice 73–2 (38 FR 30798); or

(ii) Receives approval from the State planning agency or the Council in response to a request filed on or after January 1, 1974, and prior to March 20, 1974, for approval of a capital expenditure pursuant to § 150.781 or § 150.782 (c); or

(iii) Has undertaken a capital expenditure that meets the requirements of § 150.781(a)(2).

For purposes of this definition, the mere acquisition of an institution or of the person that controls the institution by another person does not result in the creation of a new facility.

"New level of care" means a new separate category of services recognized by third party payors or approved by the Cost of Living Council. For purposes of this definition, the new category of services must entail distinct costs which are significantly different from the costs associated with the levels of care previously provided. The new level of care must furnish significantly different kinds or intensity of services from those already prevailing within the institution.

"New service or property" means a service or property which the long term care institution did not sell or lease in the same or substantially similar form at any time during the one-year period immediately preceding the first date on which it is offered for sale or lease. For the purposes of the definition, a change in appearance, or arrangement, or a change in the method or technology of providing a service, does not create a new service or property.

"Realized revenues" means:

(1) For institutions on a cash basis of accounting, the total cash received for patient services. Revenue adjustments from retroactive cost reimbursement settlements shall be considered in the fiscal year received unless other treatment is consistent with generally accepted accounting principles; and

(2) For institutions on an accrual basis of accounting, the total charges less discounts, contractual allowances, bad debts, and charity allowances accrued for patient services rendered during the same fiscal year. Revenue adjustments from retroactive cost reimbursement settlements that were not accrued in the prior period shall be considered in the fiscal year received unless other treatment is consistent with generally accepted accounting principles.

§ 150.772 Prior commitments.

(a) Except as provided in paragraph (b) of this section, all interpretations, and decisions or exceptions having prospective effect, issued under the Economic Stabilization Act prior to January 17, 1974, to long term care institutions covered under this subpart remain in force.

(b) This section shall not apply to any exception issued under Subpart O of this part authorizing a dollar increase to any institution that is subject to Subpart R pursuant to § 150.769.

(c) For purposes of calculating the base on which allowances are authorized under this subpart, each long term care institution may use the average per diem charges lawfully in effect for each class of purchasers and level of care on the last day of the institution's last fiscal year under Subpart O and, for each class of purchasers and level of care for which the institution is paid under a cost reimbursement arrangement, the total authorized cost reimbursements expressed on a per diem basis determined for the institution's last fiscal year under Subpart O.

§ 150.773 Limitations on average realized revenues per diem.

A long term care institution's average realized revenues per diem by level of care for each class of purchasers during any fiscal year may not be more than 106.5 percent of its average realized revenues per diem by level of care for each class of purchasers during the preceding fiscal year.

§ 150.774 Application of limitations.

For purposes of § 150.773—

(a) In determining the levels of care provided and the amount of average realized revenues, an institution shall follow generally accepted accounting principles consistently applied. However, no institution shall change the criteria used during the preceding fiscal year for determining the respective levels of care for its patients.

(b) The unused portion of authorized revenue increases permitted for any level of care of any class of purchasers in any fiscal year may not be applied in that year to any other level of care of any class of purchasers.

(c) The unused portion of authorized revenue increases permitted in one year but not fully implemented may be implemented only in the fiscal year following the year in which the full allowable increase was not implemented and only for the level of care of the class of purchasers to which the increase applied. The unused portion of authorized revenue increases may not be compounded.

§ 150.775 Limitation on charge increases for outpatient services.

(a) Each long term care institution shall control its charges for outpatient services on the basis of either a unit charge system or an aggregate weighted charge system.

(1) If the institution elects the unit charge system, it may not increase its charges for any outpatient service beyond 106 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year.

(2) If the institution elects the aggregate weighted charge system:

(i) the aggregate weighted charges for all of its outpatient services may not exceed 106 percent of the aggregate weighted charges for all such services lawfully in effect during the preceding fiscal year; and

(ii) the charge for any outpatient service may not be more than 110 percent of the charge lawfully in effect for that service on the last day of the preceding fiscal year (however, this paragraph does not require that charge increases be limited to amounts less than $1.00).

(iii) the formula for determining charge increases computed on an aggregate weighted basis under this paragraph (a)(2), herein referred to as %AWCI, is as follows:

$$\%AWCI=\Sigma\frac{C_2-C_1}{C_1}\times\frac{B_1}{B_2}\times 100$$

where,

C_1=the charge lawfully in effect on the last day of the immediately preceding fiscal year for a service or property.
C_2=the highest charge made or to be made during the current fiscal year for that service or property.
B_1=the actual gross charges during the immediately preceding fiscal year for that service or property.
B_2=the total gross charges during the immediately preceding fiscal year for all outpatient services and property subject to the limitations of this section.
Σ=the sum of.

(3) At the option of a long term care institution, the formula for determining %AWCI in paragraph (a)(2) of this section may be restated as follows:

$$\%\ AWCI=\Sigma\ \%\ I\times\frac{G_1}{B_2}$$

where,

$\%I$=the highest percentage charge increase for any service or property within a group of similar or related services or property.
G_1=the actual gross charges during the immediately preceding fiscal year for that group of similar or related services and property.

(4) If the charges in effect on the last day of the preceding fiscal year had been temporarily lowered to effect a restitution of overcharges to assure compliance by the end of that year, then such charges may be adjusted to the legally authorized level.

(b) The unused portion of authorized charge increases permitted in one year but not fully implemented may be implemented only in the fiscal year following the year in which the full allowable increase was not taken. The unused portion of authorized charge increases may not be compounded.

§ 150.776 Medicaid reimbursement rates.

(a) If a State agency responsible for administering the Medicaid program within that State decides to raise its State or a regional level of Medicaid reimbursement by more than 6.5 percent over the preceding fiscal year rate for any level of care and to obtain an exception to the limitations of § 150.773 with respect thereto for each long term care institution participating in Medicaid reimbursement within that region or State, the State shall demonstrate and certify to the Council the following with respect to that Medicaid reimbursement rate increase:

(1) The former rate, the date it was established, the new rate, the percentage increase, and the proposed effective date of the new rate;

(2) That the increase is cost related, as demonstated by a reliable and valid statistical sample;

(3) That the increase is necessary to implement and maintain the standards of service required by Federal or State regulations, or both; and

(4) That the increase, in the opinion of the agency, is not inflationary within the meaning of the Economic Stabilization Program guidelines.

(b) Within 30 days after receipt of the State agency's certification, the Council may take one or more of the following actions:

(1) Require the State agency to furnish additional information regarding the rate increase.

(2) Suspend the 30-day period for Council action.

(3) Issue the State agency a certificate of compliance.

(4) Refuse to issue the State agency a certificate of compliance.

(c) If the Council issues a certificate of compliance to a State agency or fails to take any action within the 30-day period specified in paragraph (b) of this section, then long term care institutions participating in Medicaid reimbursement within that region or State shall not be subject to the limitations contained in § 150.773 with respect to their average realized revenues per diem derived from levels of care covered by the State agency's certification.

(d) If the Council refuses to issue a certificate of compliance to a State agency, then long term care institutions in that region or State shall remain subject to all the limitations contained in § 150.773. Where a refusal to issue a certificate of compliance occurs after expiration of the 30-day period, the Council may issue an order modifying, deferring, suspending, or disapproving any increases already implemented by those long term care institutions.

§ 150.777 Patient's personal funds.

When a long term care institution provides services or property which are paid for from the personal funds of patients, the institution shall increase the price to the patient of a service or property only on a dollar-for-dollar basis for those net cost increases that have been incurred with respect to that service or property. In addition, a long term care institution shall not charge to a Medicaid patient's personal account any services or property that have been or are normally paid for from other sources.

§ 150.778 Special pricing rules.

(a) The methods of establishing prices for services or property set forth in this section may be used only after a long term care institution has been authorized to use these provisions pursuant to other sections of this subpart.

(b) In the case of a new level of care, a new outpatient service or property, or a new facility resulting from a capital expenditure which meets the requirements of § 150.781 or § 150.782(c), the prices for services or property may be determined by either of the following methods, without regard to the limitations prescribed in §§ 150.773 and 150.775:

(1) The price for the service or property or level of care shall not be unreasonably inconsistent with the prevailing prices charged in a substantial number of current transactions for a similar service or property by a substantial number of other long term care institutions providing health care services and properties. The prices so determined may reflect an incremental charge for interest and depreciation costs.

(2) The long term care institution shall establish its prices by using any pricing practice commonly used by a substantial number of long term care institutions. The prices so determined may reflect an incremental charge for interest and depreciation costs.

(c) New prices authorized pursuant to this section shall become effective no earlier than the first day on which the services or property shall be made available to patients. However, if the request for approval under § 150.781 or the request for exception under § 150.782(c) has not been filed before the close of the fiscal year in which the service or property was made available to patients, then the new prices shall become effective no earlier than the first day of the fiscal year in which the request was filed.

(d) A long term care institution may use the special pricing rules of this section at any time within, but not later than, twelve months after the service or property described in paragraph (b) of this section was first made available to patients.

(e) In the case of a capital expenditure approved pursuant to § 150.781 or § 150.782(c) which does not result in a new level of care or a new facility, the prices for services or property shall be determined as follows: For each fiscal year in which the project resulting from the capital expenditure is being constructed or otherwise introduced, and during the first full fiscal year of operation, the long term care institution shall establish prices sufficient to produce a level of revenues for the services and property which has been approved by the agency described in § 150.781(c) or by the Council. The institution shall calculate the total amount of allowable realized revenues per diem by level of care for each class of purchasers for each fiscal year prior to the second full fiscal year of operation. The approved level of revenues shall be added to the base authorized by §§ 150.773 and 150.774.

(f) The revenues derived from the provision of new levels of care and from the provision of services or property by a new facility shall be subject to the limitations contained in § 150.773 during the second full fiscal year such levels of care or services or property were provided, and subsequent fiscal years. For an outpatient service or property which is provided in a new facility, a long term care institution shall be subject to the unit charge limitation of § 150.775(a)(1) in the first full fiscal year after the service or property was first made available to patients; thereafter, the institution may elect as provided in § 150.775(a).

(g) The Council may modify, defer, suspend or disapprove any prices implemented pursuant to this section if the Council finds that such prices are inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program.

§ 150.779 Price schedules.

Each long term care institution shall maintain at each of its facilities a schedule showing its prices for all services on the last day of the preceding fiscal year, and each subsequent change in such a price and the date such change was made. The schedule shall be made available for public inspection, and a copy shall be furnished or mailed promptly to third party payors or to the Cost of Living Council upon request. Each institution shall either post a conspicuous and easily readable sign in each of its facilities stating the availability and location of the schedule or affix a legend to all billing statements stating the availability and location of the sechedule. No price increase may be implemented before the increase has been entered on the schedule as required by this section.

§ 150.780 Reporting procedures.

(a) Within 120 days after the end of each fiscal year, each long term care institution shall file a completed Form CLC–71 signed by the chief executive officer, the administrator or the chief financial officer with the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508. Each long term care institution shall, upon request, furnish a copy of the completed Form CLC–71 to third party payors.

(b) Each long term care institution which, pursuant to § 150.781(a)(2), is authorized to establish new charges for services or property resulting from a capital expenditure and to adjust its charges and expenses, is required to file the following information with its annual report for each year prior to the second full fiscal year after the service or property was first made available to patients:

(1) Statement of incurred expenses attributable to the operating expenses

directly related to the capital expenditure, including interest and derpreciation;

(2) Statement of the method of application of § 150.778 to establish new charges for services and property to obtain the projected level of revenues required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation.

§ 150.781 Approval of capital expenditures by a State's planning agency.

(a) (1) Except as provided in paragraph (a) (2) of this section, when a long term care institution has obtained the approval of a State planning agency for a capital expenditure in accordance with the provisions of this section, the institution may, in accordance with § 150.778, establish new charges for the services or property resulting from the capital expenditure which are necessary to produce, but not to exceed, the level of revenues approved by the agency.

(2) A long term care institution shall not be subject to paragraphs (b) through (e) of this section or to § 150.782(c) and may establish new charges for the services or property furnished to patients as a result of the capital expenditure in accordance with the applicable provisions of § 150.778 when the following occurrences have taken place prior to January 1, 1974:

(i) the capital expenditure was approved on its merits on the basis of community need by a planning agency listed in paragraph (b) of this section; however, this requirement shall not apply where State approval procedures described in paragraph (b) of this section were neither required nor available to a long term care institution; and

(ii) (A) With respect to a capital expenditure involving construction, the design development for the capital expenditure was completed and approved by the governing board of the institution; or

(B) With respect to a capital expenditure which does not involve construction, the institution was committed to the capital expenditure by authorization of the institution's governing board and one or more implementing financial obligations were contractually incurred in reliance on the authorization.

The provisions of this paragraph (a) (2) are self-executing. No written determination or ruling of the Council is required to authorize a long term care institution to apply the special pricing rules of § 150.778 if the institution meets the criteria set forth in this paragraph. If the Council determines upon subsequent review that the conditions of this paragraph have not been satisfied, it may disapprove any charges implemented pursuant to § 150.778 or take such other action as may be appropriate to ensure compliance with the rules of this subpart.

(b) A capital expenditure under consideration by a long term care institution must be approved on the merits, based upon a clear demonstration of community need, by the appropriate planning agency specified in this paragraph. The long term care institution must request approval from the planning agency designated pursuant to section 1122 of the Social Security Act (Pub. L. 92–603, 86 Stat. 1386–89 (42 U.S.C. 1320a–1)). If a State is not participating in the program under section 1122, then the approval must be obtained from the State agency administering a certificate of need program for long term care institutions. If a State is not participating in a program under section 1122 and has no State agency administering a certificate of need program, then the approval must be obtained from an agency designated under section 314(b) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(b)); otherwise, approval must be obtained from a State agency designated pursuant to section 314(a) of the Public Health Service Act (Pub. L. 92–585, 86 Stat. 1292 (42 U.S.C. 246(a)).

(c) Approval of a level of revenues that is not unreasonable to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, for the first full fiscal year of operation must be obtained from either the same agency which granted an approval under paragraph (b) of this section or another agency (such as a rate-setting commission or long term care commission) designated by the governor of the State or the mayor of the District of Columbia to perform this specific function. If a State is participating in the program under section 1122, the agency that performs the function specified in this paragraph must be the agency designated pursuant to section 1122. The agency that performs the function specified in this paragraph shall be referred to as the "State approving agency." Prior to the State approving agency taking any action to approve a level of revenues in accordance with this section the Council and the State agency shall have first agreed in writing for the State agency to approve capital expenditures pursuant to this section. For purposes of this paragraph, the first full fiscal year of operation means the first full fiscal year after the inauguration of all services and property resulting from the capital expenditure.

(d) Within sixty (60) days after the date of an approval by the State approving agency, the chief executive officer of the long term care institution shall notify the Council of such approval by sending a copy of the written decision to the Council, together a written statement signed by the chairman of the governing board of the institution certifying that funds legally available from restricted reserves have or will be applied to the capital expenditure or its directly related operating expenses in accordance with the approval.

(e) If after the original agency approval it appears that the authorized level of revenues will not reach the level required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, the institution may file with the State approving agency a request in writing to allow the institution to achieve a level of revenues in excess of the level originally authorized. A request under this paragraph shall be considered on the same basis as an original request under paragraph (c) of this section, except that in addition, the institution shall submit sufficient documentation to enable the State approving agency to evaluate changes in financial conditions that have occurred since the original approval under paragraph (c) of this section was granted, or other relevant circumstances which significantly alter the assumptions upon which the earlier approval was based. The notification provisions of paragraph (d) of this section shall apply to approvals under this paragraph.

§ 150.782 Exceptions.

(a) No long term care institution may exceed the limitations set forth in §§ 150.773, 150.775 and 150.777 except as may be authorized pursuant to this subpart. Each long term care institution shall, in addition to meeting the specific requirements of this section, prepare any request for exception to be filed with the Council in conformity with the general provisions relating to exceptions prescribed in Part 155 of this title and shall obtain the recommendation of the State advisory agency referred to in § 150.783 on the request for exception. The State advisory agency shall forward the institution's request for exception, together with its recommendation, directly to the Council. The requirement for the recommendation shall not apply if the State advisory agency fails to act within thirty (30) days (and the institution may then file its request directly with the Council) unless the agency shall have requested corrected or additional information in which case the thirty (30) day period shall be suspended from the date of the request until the agency informs the institution that the information has been received. The 30 day period shall then resume running.

(b) Requests for exception filed under this section by a long term care institution are considered to be provisionally approved 60 days after the date of filing of the request with the Council. The Council shall inform the long term care institution promptly by written notice of the date of filing and the docket number of the request for exception. During the 60-day period, the Council may issue a suspense notice which shall have the effect of preventing the unexpired portion of the 60-day period from continuing to run, if the documents submitted by the institution are incomplete, erroneous or do not meet the criteria set forth in this section. In any case in which the Cost of Living Council issues a suspense notice and requests additional or corrected information from the institution, the 60-day period shall resume running only after the Council has informed the institution that the information has been received and accepted. The price increases authorized by this section shall be applied only to services or property provided to patients by the institution after the 60-day period has expired. If after implementation of an increase fol-

lowing the expiration of the 60-day period, the Council finds that the increase is inconsistent with the rules of this subpart or unreasonably inconsistent with the goals of the Economic Stabilization Program, it may issue an order modifying, deferring, suspending or disapproving the increase. In such an instance, if the exception request had been submitted in good faith, the long term care institution shall not be required to refund any monies received, or to reduce reimbursements otherwise allowable from the date of expiration of the 60-day period until the Council's determination of the request or be subject to any criminal fine or civil penalty on account of the increase implemented on the basis of the provisional approval of this section.

(c) (1) If the State approval procedures referred to in § 150.781 are not or were not available to a long term care institution, the institution may request from the Council an exception to establish, in accordance with § 150.778, new prices for services or property resulting from a capital expenditure which are necessary to produce, but not to exceed, the level of revenues approved by the Council pursuant to this paragraph. The request for exception must be accompanied by supporting documentation, indicating the reason why the approval procedures are or were not available, and permitting the Council to evaluate the following:

(i) Whether there exists a community need for the proposed project adequate to assure financial support without causing localized shortages of labor or serious long term care market disruptions susceptible of requiring other exceptions by the Council;

(ii) Whether the project will foster cost containment initiatives or improved efficiency and productivity in the long term care institution;

(iii) All expenses attributable to the operating expenses directly related to the capital expenditure, including interest and depreciation, calculated without regard to the annual allowances authorized by this subpart;

(iv) The level of patient service revenues required to finance the proposed project for the first full fiscal year of operation, considering funds legally available from restricted reserves for both capital expenditures and operating expenses; and

(v) The charge and cost reimbursement level expressed in terms of average realized revenues per diem which the institution would propose to establish to produce the requested level of revenues.

(2) Each request shall be signed by the chief executive officer of the institution and shall be accompanied by a written statement signed by the chairman of the governing board of the institution certifying that funds legally available from restricted reserves have been or will be applied to the operating expenses directly related to the capital expenditure, including interest and depreciation, as stated in the request for exception.

(3) If after the original Council approval it appears that the authorized level of revenues will not reach the level required to finance the operating expenses directly related to the capital expenditure, including interest and depreciation, the institution may file with the Council a request in writing to allow the institution to achieve a level of revenues in excess of the level originally authorized. Such requests shall be considered on the same basis as an original request under this paragraph, except that in addition, the institution shall submit sufficient documentation to enable the Council to evaluate changes in financial conditions that have occurred since the approval under this paragraph was initially granted, or other relevant circumstances which significantly alter the assumptions upon which the earlier approval was based.

(d) A long term care institution may request an exception for experimentation in long term care reimbursement methodologies. The Council may grant a prospective exception to a single institution or to a group of institutions as members of a class, geographic or otherwise. The Council may consult with the Department of Health, Education, and Welfare prior to making its determination. Requests submitted pursuant to this paragraph need not be cost justified.

(e) (1) A long term care institution may request an exception as provided in this paragraph when a serious hardship or gross inequity has been caused by any of the following occurrences:

(i) A demonstrable increase in bad debts experience that causes the institution's gross charges not to reflect accurately actual collections;

(ii) Increased expenses resulting from requirements imposed by law or government regulation; and

(iii) Increased expenses incurred by reason of wage and salary increases that are exempt under the provisions of § 152.32 of this chapter, or are below minimum wage rates imposed by Federal or State statutes of general application.

(2) Each request for an exception shall be evaluated on the basis of cost justification. In reviewing evidence of the cost justification submitted by the institution, the Council will also consider evidence of cost containment initiatives, prudent management practices and evidence of consistent application of accepted accounting principles demonstrated by the institution. As part of its evaluation, the Council will review the following financial factors:

(i) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(ii) Working capital needs; and

(iii) All revenues from patient services, and revenues from other operating activities.

(f) A long term care institution may request an exception for any reason causing a serious hardship or gross inequity. Each request submitted pursuant to this paragraph shall be evaluated on the basis of cost justification. In reviewing the cost justification submitted by the institution, the Council will also consider evidence of cost containment initiatives, prudent management practices and consistent application of accepted accounting principles demonstrated by the institution. As part of its evaluation, the Council will review the following financial factors:

(1) All allowable operating expenses, including depreciation, and special reserve accounts that are required to be replenished by reason of contractual agreement or consistent historical application of a governing board resolution;

(2) Working capital needs;

(3) All legally available funds, including revenues from patient services, revenues from other operating activities, and revenues from non-operating sources such as unrestricted gifts received during the fiscal year being reviewed or unrestricted income from unrestricted and restricted reserves;

(4) Changes in any prices or directly related operating expenses resulting from capital expenditures previously authorized under this subpart or resulting from services or property for which new prices have been authorized under Cost of Living Council Notice 73–2 (38 FR 30798) published on November 7, 1973; and

(5) Evidence of cost behavior that is unanticipated and significantly different from that on which the institution has budgeted.

§ 150.783 Advisory State actions and Federal Approving Officers.

(a) The governor of each State and the mayor of the District of Columbia are each requested to designate an agency to advise the Council on requests for exceptions to these regulations or on any other matters that the Council may from time to time specify. Each agency shall review the requests for exceptions filed with it under § 150.782(a) pursuant to the applicable guidelines set forth in this subpart and whenever it considers that the granting of an exception is essential to the provision of adequate health services and consistent with the Economic Stabilization Program shall recommend to the Administrator of the Office of Health, Cost of Living Council, or to an official appointed under paragraph (b) of this section, that an exception be granted by the Council.

(b) The Council may authorize and appoint an official who shall be a full time employee of the Federal Government to whom may be subsequently delegated the authority to issue initial decisions on requests for exceptions submitted under the provisions of § 150.782. Such official may, in his discretion, hear representatives of long term care institutions, and request and receive additional information. He shall consult with, and receive the advice and recommendations of, State advisory agencies with respect to the requests for exception. After having reviewed the record and considered the recommendation of the State advisory agency, and all applicable statu-

tory and regulatory criteria, he shall grant or deny the request for exception, in whole or in part, or shall forward the request to the Council, with or without a recommendation. He shall notify the requesting institution in writing of his decision. An institution aggrieved by an initial action under this paragraph may request reconsideration pursuant to Part 155 of this chapter.

§ 150.784 State control program.

(a) An agency designated by the governor of a State or mayor of the District of Columbia that has a long term care price control program may apply to the Cost of Living Council for authorization to administer the control program within the State or District of Columbia in lieu of the controls set forth in §§ 150.769 through 150.788 and administered by the Cost of Living Council. The State agency shall submit to the Cost of Living Council a comprehensive description of its proposed stabilization plan and of its existing or proposed rules for use by the agency in considering requests for price increases for the long term care institutions under its jurisdiction. The submission to the Council shall include an evaluation by the long term care institutions or associations of long term care institutions to be covered by the control program.

(b) The governor of a State or the mayor of the District of Columbia may designate an agency to coordinate a long term care price control program and assign to a nongovernmental organization the responsibility for administering the program.

(c) To qualify for authorization under this section. a control program must—

(1) Have as its objective the substantial limitation of the rising price of long term care, and there must be reasonable basis for determination that the objective can be met;

(2) Include rules and regulations that are fair and equitable;

(3) Contain adequate and assured funds for staffing, commencement of program and operations for a minimum of one year;

(4) Provide for participation in policy development by provider groups, long term care institutions and consumers;

(5) Be coextensive in coverage with the Economic Stabilization Program controls for long term care institutions, or it must be demonstrated that the State program will have substantial impact on long term care charges and expenses;

(6) Include objective standards by which to measure overall performance;

(7) Include uniform standards for measuring individual provider performance;

(8) Include procedures for consideration of requests for exception and for review of original decisions denying such requests;

(9) Include provisions to assure compliance (such provisions may provide for the agency to order refunds, rollbacks, or such other remedies that are reasonable and appropriate to achieve compliance); and

(10) Include a provision for price posting similar to that required in § 150.779.

(d) If the Cost of Living Council approves the proposed stabilization program and rules of an agency, it will notify the agency that when those proposed rules are finally adopted and put into effect by the agency, the Cost of Living Council will issue a certificate of compliance to that agency. If the Cost of Living Council approves existing rules of an agency, it will issue a certificate of compliance to that agency.

(e) A long term care institution may place in effect, in accordance with the rules of an agency to which a certificate of compliance has been issued, any price increase authorized or allowed to go into effect under the State program.

(f) Except as provided in paragraphs (g) and (h) of this section, actions taken under the program of an agency to which a certificate of compliance has been issued under paragraph (d) of this section are not subject to review by the Cost of Living Council.

(g) Each agency to which a certificate of compliance has been issued under paragraph (d) of this section shall also agree to furnish periodically to the Cost of Living Council such information as the Council may prescribe for the Council's use in determining whether the agency is following its adopted rules and whether the purposes of the Economic Stabilization Program are being served.

(h) The Cost of Living Council may revoke a certificate of compliance issued underparagraph (d) of this section at any time, or take such other action with respect to the certificate as it considers appropriate, if it determines that the rules to which the certificate applies are not being followed or are not serving the purposes of the Economic Stabilization Program. Price increases approved under the State program prior to such revocation or other action shall in no way be affected by such revocation or other action.

(i) Any long term care institution not subject to a control program certified under this section is subject to this subpart.

§ 150.785 Prohibition.

No long term care institution subject to this subpart may adopt any change in charging practices, reduction in quality or quantity of services, or any other practice that has the effect of avoiding compliance with any provision of this title.

§ 150.786 Remedies for non-compliance.

(a) In addition to any remedies provided in Part 155, if the Council determines that the limitations contained in § 150.773, § 150.775, or § 150.777 have been exceeded, and no exception has been granted, the Council may order:

(1) The reduction of prices to compensate for realized revenues or other increases in excess of the limitations; or

(2) The reduction of prices to assure that realized revenues and prices will not exceed the limitations contained in § 150.773, § 150.775, or § 150.777,; or

(3) The refund to appropriate classes of purchasers of an aggregate amount equal to the excess (the amount to be refunded or credited to an account shall be allocated on a pro rata basis); or

(4) Any other action which is reasonable and appropriate to cause the remission of such excess realized revenues; or

(5) Any combination of actions under this paragraph.

(b) Except as otherwise provided in this subpart, if a long term care institution determines that it has exceeded the applicable limitations of § 150.773, § 150.775, or § 150.777, unless an exception request is pending, the granting of which would eliminate the violation, the institution shall submit together with its annual report filed pursuant to § 150.780, a plan for achieving compliance with these sections to the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508. If the institution has such an exception request pending at the time of filing the annual report pursuant to § 150.780, the compliance plan required by this paragraph shall be filed with the Council within 20 days of receipt by the institution of a decision and order denying the exception request or granting an amount less than that necessary to eliminate the violation. Such a compliance plan may provide for a reduction of charges, a stipulation of no price increases for a certain period of time, refunds, any other action which is reasonable and appropriate to cause the remission of excess charges, or a combination of any of the foregoing. The Cost of Living Council may approve such a plan, order certain changes, or order a different plan of its own design.

§ 150.787 Retention and availability of records.

(a) Each long term care institution subject to this subpart shall maintain such records as are sufficient to establish the compliance status of the institution with respect to this title.

(b) Records required to be maintained under paragraph (a) of this section shall be made available for inspection at any time upon the request of an officer or employee of the Council or of any other person authorized to represent the Council.

(c) Each long term care institution required to maintain records under this section shall retain such records for at least 3 years after the last day of the fiscal year in which the transactions or other events recorded in such records occurred or the property was acquired by that institution.

§ 150.788 Savings and severability.

(a) If this subpart is held invalid with respect to any long term care institution, Subpart O of this part in effect on December 31, 1973, shall govern the long term care institution.

(b) If any provision of §§ 150.769 through 150.788 of this subpart applicable to long term care institutions is held invalid, the other provisions of these sections shall remain in full force and effect.

6. In 6 CFR Part 150, an Appendix is added to Subpart R to read as follows:

APPENDIX TO SUBPART R—CONTROL OF HOSPITAL COSTS UNDER THE ECONOMIC STABILIZATION PROGRAM

Current inflationary problems of the health sector and the need for Federal activity

result from the nature of the industry itself, and the incentives faced by health care managers. As will be discussed below, the fact that most hospital bills are now paid on a cost-plus basis has generated a "blank check" environment for the financing of hospital care. Although this kind of reimbursement system existed before 1965, it was not until the introduction of Medicare and Medicaid that cost-plus reimbursement accounted for a substantial proportion of hospital revenue. Hence, it was this massive infusion of Federal and State funds that radically affected hospital behavior. The effects were especially significant given the original intent of Congress that Federal financing programs should be neutral with respect to the delivery system. Many now consider the passage of the Medicare and Medicaid amendments in 1972 as a partial repeal of the original intent of Congress.

Among the many amendments included in this bill, P.L. 92-603, several stand out as major changes in the role of the Federal Government vis-a-vis health providers: those with respect to capital expenditures, Professional Standards Review Organizations, limitations on reasonable cost reimbursement, payment for the services of teaching physicians, utilization review, and prospective reimbursement. In several instances the provisions of this act specifically prohibit reimbursement for costs that would normally be allowed unless the hospital has complied with comprehensive health planning requirements, and does not provide care in a much more expensive way than other similar providers. The usual procedure has been for Medicare to reimburse all costs actually incurred by an institution in providing medically necessary care to program beneficiaries. The important feature of the 1972 amendments is that they now recognize that some of the costs which used to be considered reasonable may not be reimbursed if a hospital spends more than other comparable institutions to provide similar services. Similarly, if non-Medicare and non-Medicaid patients are not asked to pay (the key is being asked, not actually paying) their full share of costs, i.e., charges are less than costs, Medicare will reimburse only to the level of charges.

At the time that most of these amendments were being debated in the Congress, the Administration introduced, in August 1971, Phase I of its Economic Stabilization Program. It is crucial for an understanding of this program to appreciate the environment in which it was created. This environment has both a past and a future. The past is Medicare and Medicaid; the future is National Health Insurance. A critical issue involved in the debate over National Health Insurance will be the level of government participation in the medical care system.

In the end, the discussion about the Economic Stabilization Program is really whether an uncontrolled and unregulated health delivery system should exist when all or most of the medical bill is paid on a cost-plus basis by some third-party payor. A second issue, of course, is if controls are necessary, what shape should they take.

Phase IV controls are now also being issued for long term care institutions, medical practitioners and medical laboratories, and health maintenance organizations. The remainder of those who were designated as "noninstitutional providers of health services", during Phase II are no longer covered by specific health price controls. The goal of the Phase IV controls in each sector of the health industry is to define the required limitations on the proper unit of volume and at the appropriate level in order to allow for continued development and growth within an effective cost containment framework.

Medical practitioners and medical laboratories are to continue under price increase limitations although prices may be raised an average of 4% instead of 2.5%, in recognition of higher practice costs. The Phase II requirement of cost justification has been removed, and the exceptions process simplified and liberalized. The new HMO controls attempt to deal directly with the dual nature of the HMO—they include provisions to cover both the insurance company functions and the activities that the HMO performs as a provider of health service. They are designed to aid and encourage the development of HMOs.

Long term care institutions are being placed under a system which limits to 6.5% increases in realized per diem revenue by class of purchaser. This recognizes the character of long term care institutions in which much revenue comes from just a few sources such as State Medicaid programs. The new system also recognizes the fact that stays are generally long, occupancy stable, and the bulk of reimbursed services can be included in a single daily rate.

Because of the overriding importance of the hospital sector and the complex procedures necessary to control its costs, we will focus our discussion on the hospital and the controls designed to moderate the rate of increase in hospital costs.

BACKGROUND

In the modern history of the health industry, 1965 stands out as a line of demarcation—pre- and post-Medicare/Medicaid.

Table 1, below, shows the rate of change of the Consumer Price Index for medical care and semi-private room rate compared with the "all-items" C.P.I. for selected years. This index, constructed and maintained by the Bureau of Labor Statistics is also referred to as the "cost of living" index. Even prior to the passage of Medicare, hospital costs were increasing more rapidly than the overall cost of living.

TABLE 1.—*Average annual increases in consumer price index*

[In percent]

	All items	Medical care	Semi-private room
1950			
1955	2.2	3.8	6.9
1960	2.0	4.1	6.3
1965	1.3	2.5	5.8
1967	2.9	7.1	19.8
1969	5.4	6.8	13.4
1970	5.9	6.3	12.9
1971	4.3	6.5	12.2
1972	3.3	3.2	6.6
Fiscal years 1969 to 1971	5.6	6.7	13.0
Phase II (November 1971 to January 1973)	3.6	3.4	5.4

Source: Consumer Price Index, Bureau of Labor Statistics.

The pre-Medicare/Medicaid experience suggests that the health industry has always possessed significant inflationary potential. However, it was only after the introduction of Medicare and Medicaid that the problem of hospital and medical care inflation really became serious and succeeded in achieving great visibility. The semi-private room rate which had been increasing at about 6.0 percent a year jumped to rates of increase of between 13 and 20 percent following the introduction of these two Federal programs. These rates of increase were more than three times the increase reported for all prices in the economy.

Table 2 presents a summary of the growth in hospital expenses for various items—labor, nonlabor, and capital in pre- and post-Medicare/Medicaid periods. Again the dramatic increases following the introduction of those Federal programs is apparent.

TABLE 2.—*Compound growth rates for selected hospital indices*

[In percent]

Index	Pre-medicare (1960-65)	Post-medicare (1966-71)
Total expense	10.2	17.0
Payroll expense	10.1	15.9
Nonpayroll expense	10.4	18.6
Personnel	5.1	5.6
Average salary	4.7	9.8
Increase in plant assets	8.0	9.1

Source: "The Hospital—A Changing Environment," Investment Research, First National City Bank, 1973, p. 6.

With the aid of this very simple table, two important aspects of hospital cost increases are shown:

1. Although significant, wage increase in the post-Medicare period did not account for all of the growth in payroll expenses; much of the increase resulted from increases in the number of hospital employees.

2. Payroll expenses in total grew in the post-Medicare period less rapidly than did nonpayroll expenses.

To obtain more meaningful measures of hospital cost increase, these aggregate statistics are converted into two commonly used measures—expense per patient day and expense per admission. These measures take into account the full picture of hospital cost inflation including the fact that major increases in spending resulted from increased use of laboratory tests, X-rays, therapy, drugs, etc.

Table 3 below summarizes these increases for selectively grouped periods.[1]

[1] The Phase III/IV row and the "intensity" columns were calculated using the projections and index discussed in the section on Phase IV controls.

TABLE 3.—*Increase in hospital expenses*

[In percent]

	Expense per adjusted patient-day	Expense per adjusted admission	Intensity of services per day [1]	Intensity of services per admission [2]
Pre-medicare (1963 to 1965)	7.5	8.2	3.0	3.7
Post-medicare (1966 to 1969)	12.2	14.4	7.2	9.0
Pre-ESP (1969 to 1971)	13.9	11.6	5.1	2.3
Phase II (1972 to 1973)	10.4	8.9	4.2	2.8
Phase III	[3] 9.0	[3] 7.4	2.9	1.9

NOTE.—The wage increases included in the input price index were of health workers which rose significantly faster after Medicare than wages for all workers. Hence, the increase in "wages and prices" is not all uncontrollable in the usual sense. The increase in intensity of services is therefore the amount of funds used to purchase more equipment or personnel.

[1] Obtained by dividing expense per adjusted patient-day by hospital wage and price index and calculating percentage increases.

[2] Obtained by dividing expense per adjusted admission by hospital wage and price index and calculating percentage increase.

[3] Projection using January-July 1973 and projected through 1974.

Before Medicare, expense per patient day and expense per admission were rising at rates of 7.5 percent and 8.2 percent respectively. This meant intensity increases of 3.0 percent and 3.7 percent respectively.[2]

In contrast, the immediate post-Medicare period saw increases of 12.2% in expense per day and 14.4% in expense per admission, with increases in intensity of 7.2 percent per day and 9.0 percent per admission. As explained in the notes accompanying Table 3, these increases in intensity represent the amount spent in the provision of more services per patient day or per admission, after taking into account increases in the prices of goods and services bought by hospitals.

The period just before the imposition of economic controls (1969–1971) saw the annual per diem increase go up even more, to 13.9 percent. However, during 1968 the average length of stay declined with the result that expense per admission rose only 11.6 percent or an intensity increase of 2.3 percent. Intensity increases per day rose 5.1 percent, down from the 7.2 percent of the immediately preceding period, but still higher than before Medicare. These figures clearly show the very rapid growth of hospital costs per day of service or per day in a hospital immediately following the introduction of Medicare. They also show the start of a very encouraging trend. Length of stay has been declining steadily in the range of 1–2 percent annually since 1968. This means that when people go into the hospital, they get out faster. Thus, the cost of a total stay in a hospital, the real cost with which the patient is concerned, has been rising more slowly than the cost per day. More tests and other services are being performed, but in a shorter number of days.

The use of the last two columns in Table 3 is an attempt at separating hospital cost increases into: (1) Those necessary to provide the same level of services as in the previous year; and (2) those cost increases which were used to provide more services per day or per stay in a hospital, i.e., increases in "intensity of services". As noted in Table 2 however, part of the increase in the cost of producing the same care in the post-Medicare period was for wage increases higher than those offered to most workers in the economy. In the usual sense of an index, one would not take the data for the index from the area under analysis. Rather, comparisons would be drawn to the area from what had occurred in the economy in general. In this case, however, we have attempted to use actual input price data from the health industry itself wherever possible, in order to highlight the growth in the amount spent to provide more services. That is, after Medicare, when the pressures to control costs were reduced, hospital workers received increases in wages greater than those paid to non-hospital workers. Although some of this wage increase went to increase the earnings of low wage earners, all hospital workers benefited from these increases. This difference could amount to as much as one percent of total cost diverted from increased use of inputs to higher wage increases for health workers.

Table 4 brings together many of the ideas which we have discussed thus far. On a per patient day basis, cost increases accelerated rapidly after 1965 with an important factor being greater intensity and services provided per day of care. In order to understand the need for and the potential impact of economic controls it was necessary to decompose these cost increases in some summary format into that part which arose from the higher prices paid for the inputs, and that part that arose from increases in services.

Before the introduction of Medicare, the relatively low rates of increase in costs were divided evenly between increases in wages and prices, and increases in the amount spent on more services. With the introduction of Medicare, increased use of inputs began immediately, followed shortly thereafter by large increases in wages and hiring of more employees.

Table 4 shows that during the 1969–1971 period, when average cost per patient day was rising 14.8 percent, wages were rising 10 percent, and hospitals were increasing their employees per day at a rate of 3.7 percent. Similarly, non-payroll expenses during this period were rising 15.9 percent annually, when prices were going up only 5.1 percent and the use of non-wage inputs was increasing at an annual rate of 10.3 percent.

TABLE 4.—*Factors contributing to hospital cost increases (expenses per patient day)*

Item	Average annual percentage increase					
	1950–60	1960–65	1965–67	1967–69	1969–71	1971–72 [1]
Total increase	7.5	6.7	10.3	13.8	14.8	11.6
Increase in wages and prices	3.8	3.5	4.1	8.0	8.2	5.7
Wages	5.2	4.7	4.7	9.9	10.0	7.0
Prices	1.5	1.3	2.9	4.8	5.1	3.3
Changes in service	3.7	3.2	6.2	5.8	6.6	5.9
Labor	3.1	1.7	3.8	2.8	3.7	2.2
Other	4.6	5.6	9.6	9.8	10.3	10.1
Percent of total increase due to—						
Wages and prices	49.6	51.6	39.7	58.2	55.3	49.5
Changes in services	50.4	48.4	60.3	41.8	44.7	50.5

[1] Based on estimates from the "Hospital Indicators" National Hospital Panel Survey in Hospitals, J.A.H.A., Dec. 16, 1972.

Source: Price data are from the Consumer Price Index, Bureau of Labor Statistics. All other data are from Hospitals, Guide Issues, August 1, various years, and Hospital Statistics 1971, American Hospital Association, 1972.

The proportion of the increase in per day costs going into more inputs of all types has continued to the point where these intensity increases amount to almost half of the total. One possible explanation for this trend is that the system has not yet fully adjusted from the tremendous increase in inputs that began in 1965. Although the relative proportion of increases going to increased use of inputs declined in 1967–1969, it was not because these increases were tapering off, but because wages and prices began to increase at double pre-Medicare rates.

Having established that by all definitions of cost, hospital costs were rising at very high rates between 1965 and 1971, let us turn briefly to theories and definitions of hospital inflation before proceeding to discuss economic controls as they were designed to combat inflation in this health care sector.

INFLATION IN THE HOSPITAL INDUSTRY

In the discussion thus far we have passed over a discussion of the appropriate measure of the price of hospital services. As indicated previously, we have concentrated on the more inclusive measures of hospital prices such as cost per patient day or cost per admission. While these inclusive definitions of hospital prices are now widely used in the economics of health care literature, their use in the design of the health care cost control regulations is at the heart of the current controversy over the proposed Phase IV controls. To understand why the definitions of price as used in other sectors of the economy are not appropriate for the hospital sector, it is useful to briefly discuss why hospital cost inflation has occurred.

Martin Feldstein offers much evidence that hospital cost inflation is caused primarily by increases in the demand for services.[3] Several reasons are offered for the increased demand. As insurance coverage increases, and the net cost to the patient is reduced, more and higher quality care is demanded, hence higher costs. The growth of cost-plan reimbursement (see above) has also put hospitals in a position where they may incur higher costs (to provide higher quality or more expensive services) without fear of reductions in demand, or a reduction in their revenues.[4]

Explanations of the causes of inflation of this type usually place the emphasis on a general increase in demand for a commodity or service which can only be satisfied at higher prices. The higher price then serves to ration the available supply, making it available to those willing to pay this higher price. The inflation in health cost, due to increased demand for services was, however, characterized by an unusual circumstance. As the cost of care rose, because of the addition of more and costlier inputs, demand did not slacken. The patient faced an extremely low net price, resulting from ever-increasing insurance. In addition, under Medicare and Medicaid, where the net price to the patient is essentially zero, with the programs paying for all incurred costs, the desire to increase the number and kinds of services when totally unchecked. In essence, the potential menu of services rendered by the hospital was unlimited.

Blue Cross had always reimbursed on a cost basis, but until the introduction of Medicare and Medicaid, and the tremendous growth of insurance coverage in the late 1960's, Blue Cross cost reimbursement alone was generally not sufficient to cause this tremendous alteration in hospital behavior. The growth of Blue Cross during the 1940's and 1950's did change hospital behavior somewhat, but it was only when Medicare and Medicaid began, and over 50% of all hospital revenues came from cost reimbursement, that behavior changed substantially. In addition, at some point higher hospital costs are reflected back

[2] Feldstein (p. 17) using a different set of adjustments had calculated an annual increase in intensity of about 4 percent in this period, and a 3.8 percent average of 1955–1968 "The Rising Cost of Hospital Care". Martin S. Feldstein, 1971, Information Resources Press.

[3] Ibid, Chapter 3.

[4] Medicare, Medicaid, and most Blue Cross plans contract with participating hospitals, and agree to pay the costs of providing services to the beneficiaries or subscribers of the third party. The share of costs to be assumed is determined retrospectively (i.e., after the fiscal year is over) by calculating the ratio of the subscribers' gross charges to the total charges billed by the institution, and applying the ratio to the total costs of the covered departments.

to patients in the form of higher Blue Cross premiums. This was not the case with Medicare and Medicaid where the patient essentially pays no premium. There is however, a one day hospital deductible under Medicare which has gone up in proportion to increased hospital costs, but this accounts for only a small amount of the dollar increase in hospital expenses. The net result of all these changed activities is that while the total cost of a day of hospital care rose from $16 in 1950 to $109 in 1973, a patient's out-of-pocket costs actually declined from $10 per day to $9 per day.[5] As mentioned above one of the factors that generally limits inflation is the inability to expand production or services indefinitely as demand increases. The relative ease with which supply can respond to changes in price is called the "elasticity of supply". It has often been assumed that the supply of hospital services is relatively inelastic, i.e., that it does not respond significantly to changing prices or conditions. However, the post-Medicare/Medicaid experience did much to dispel that notion. The quantity response of the hospitals to the increase in demand that accompanied the introduction of Medicare and Medicaid was implicit in the increase in the number of nonfederal short-term general hospitals, the number of beds, and the average hospital size from 1965–1970 (see Table 5).

[5] Hospital Indicators Panel Survey.

At the same time that the number of hospitals and beds was being expanded, patients began to stay in hospitals longer. Length of stay began increasing from an average of 7.8 days in 1965 to 8.4 days in 1968, partly because of the increase in elderly patients. Length of stay levelled off in 1968 and then began to decline. Hospital occupancy rates rose from 76% in 1965 to 78% in 1970, but then they, too, began to decline. Occupancy *continued* to decline until 1973 when, according to Indicators data, it levelled off. A comparison of capacity utilization (i.e., occupancy) rates during this period is revealing. In 1965, when there were 741,000 beds they were occupied 76% of the time. In 1970, with a supply of 848,000 beds and a 5% greater length of stay, the occupancy rate was only 2.6% higher than it had been in 1965. Clearly, the new beds were not being used to capacity or even to the same extent as was the old supply. By 1972, with a supply of beds 14% higher than that of 1965, the occupancy rates were 75.2%, lower even than the 1965 rate.

TABLE 5.—*Hospitals, beds, size, and utilization, selected years*

Year	Hospitals	Beds (thousands)	Average bed size	Average length of stay (days)	Occupancy rate
1965	5,736	741	129	7.8	76.0
1968	5,820	806	138	8.4	78.2
1970	5,859	848	145	8.2	78.0
1972	5,843	884	151	7.9	75.2

Source: Hospital Statistics, 1972.

These figures might lead one to question the long-term wisdom of the post-Medicare/Medicaid quantity response. It is necessary to ask how many beds were really needed. If there had been no more beds in 1972 than in 1965, each bed would have had to be occupied only 88% of the time in order to serve all the 1972 admissions to hospitals. This does not seem to be an unusually high capacity untilization rate. But even granting that the optimal occupancy rate for most hospitals is several percentage points lower, one is still troubled by the expansion of supply and the resultant costs to all patients of maintaining one out of every four beds empty at all times.

The causes of hospital cost inflation described above, and the large increase in hospital expenses, would lead one to the conclusion that there would have been an inflation problem even if the prices hospitals paid for their inputs (labor, capital, consumable goods) had not risen in any unusual manner. Yet such increases did occur in the latter half of the 1960s, somewhat fueled by the cost pass-through approach to reimbursement, but also caused by external forces. These increases add an additional layer to the inflation problem. There have been many empirical studies which have shown the contribution to inflation made by increases in the cost of each factor. In the recent book by Karen Davis and Richard Foster,[6] the authors summarize this literature. The two basic cost items that have exacerbated the cost inflation problem are capital[7] and labor.[8] The assurance of adequate reimbursement for services led to an essentially unconstrained increase in the amount of equipment purchased and the number of hospitals, beds, and an increase in average bed size. These increases often occurred without regard to the usual analytical criteria of efficiency, need, or likely utilization. It also led to increases in the number of hospitals offering various kinds of complexity expanding services.[9] That is, as demand expanded without constraint, the use of non-wage inputs and different technologies expanded as well. Much of this expansion was in the physical plant itself, where the relatively small proportion of cash required allowed major capital expansion with the assurance that third party payments would generate adequate revenues to meet mortgage obligations.

Increased labor costs as well have been a factor in adding to hospital inflation. Increases in the hospital's wage bill have come about both through increases in the wages per employee, in part due to so-called "catch-up" wage increases, and increases in the number of employees.

The question of "catch-up" wage increases has two phases—catch-up of lower paid hospital employees with other hospital employees and catch-up of hospital employees with non-hospital employees. Although comparison is difficult since many hospital jobs do not exist elsewhere, data from the triennial BLS Industry Wage Study in Hospitals when compared with the general "Area Wage Surveys," also conducted by BLS, show that there has been significant closing of the gaps between hospital employees and those in other industries.[10]

Although it is difficult to measure the precise impact of the extension of minimum wage legislation to hospital employees, and the spread of collective bargaining agreements, there is little doubt that they have had major effects. Those areas of the country, such as Oakland-San Francisco and New York City, which had some of the first collective bargaining agreements (and strikes by hospital employees) now have the highest wage scales in the health industry, and have wages generally comparable to, if not higher than, similarly employed individuals outside the hospital industry. Much of these increases are reflected in the 10 percent wage increases after Medicare that are shown in Table 4.

In summary, the analysis of hospital cost inflation reveals that the uncontrolled increases in expenditures for health care were directed into a variety of channels. They were reflected only in part in higher room and board rates. Still further increases were reflected in the costs of anciliary services. The need for these increases had resulted from substantially higher wage increases to hospital employees, the employment of more workers per patient served, the purchase of newer and more elaborate equipment, and the building of more and fancier hospitals.

All of these cost increases were translated into higher unit charges and larger increases in the aggregations of charges per day and per stay, and higher total reimbursements from third party payors.

Consequently, no single measure of price can properly reflect the changes that occurred, nor can one seek to control hospital cost inflation by limiting the growth in only one price or group of prices. It is for this reason that most health economists now rely on the more inclusive measures of cost per patient day and the cost per admission as indices of hospital prices.

FIRST ATTEMPTS AT ECONOMIC CONTROLS—PHASE II

In 1971 hospital room charges were rising at 13 percent per year, and hospital costs per patient day were rising even faster, at 14.8 percent. The tremendous increase in the use of inputs, especially non-wage inputs, continued, and wage rates were now rising at 10 percent per year. Prices in the general economy were rising faster than at any time in the previous twenty years (at 5.1 percent per year).

The decision was made by the President in the summer of 1971 to place the economy under a 90-day wage and price freeze with a series of Phase II economic controls to be established by the end of the freeze. Because of its unique characteristics, the health industry was singled out for separate controls that would deal with the special nature of inflation in that sector of the economy. These controls, issued by the Price Commission in December 1971, were developed in conjunction with the Health Services Industry Committee.

[6] Community Hospitals: "Inflation in the Pre-Medicare Period", Karen Davis and Richard Foster, 1973, Social Security Administration.

[7] See Maw Lin Lee, "A Conspicuous Production Theory of Hospital Behavior", Southern Economic Journal, July 1971, pp. 48–58.

[8] See "Rising Cost of Hospital Care", op. cit. Chapter 5.

[9] See Ralph E. Berry, Jr. "Perspectives on Rate Regulation"; paper presented at the Conference on Regulation in the Health Industry, January 9, 1974 National Academy of Sciences, Institute of Medicine, Washington, D.C. P. 12ff.

[10] In addition to the evidence presented in Feldstein, Chapter 5, there is a discussion of hospital nursing wages relative to other nurse wages and relative to other female-oriented occupations such as teacher and sceretary in: Altman, S.H. "The Present and Future Supply of Registered Nurses", 1971, U.S. Department of Health, Education and Welfare, Division of Nursing, p. 80. Altman shows significant progress made by registered nurses relative to these other occupations. Unpublished data from the same study also show larger increases for RN's relative to industrial nurses.

PHASE II CONTROLS

The Phase II health controls included regulations for institutional providers of care (hospitals and nursing homes) and non-institutional providers of care (predominantly physicians and dentists). While the goal of the institutional provider regulations was based on the Price Commission goal for the general economy, a halving of inflation rates in each sector, it was impossible to implement health controls that were the same as, for example, shoe controls. As indicated previously, there are factors other than a narrow definition of price per unit of service that enter the picture; cost reimbursement, technological advance, greater use of inputs, and the ambiguous nature of the product produced by a hospital.

The first major problem was how to correlate hospital care paid for under cost reimbursement contracts with that paid for on the basis of charges per service.[11] Using a limitation of 6.0 percent on increases in aggregate annual revenues due to price increases as the basic control, a per diem limitation of 8.0 percent was instituted for cost reimbursers, with the additional 2.0 percent for increased intensity of services per day. Thus, there was an explicit limit on price increases for both charge paying patients (revenues generated through increases in prices) and cost paying patients (maximum allowable per diem increases in costs). Combined with the 6.0 percent increase in aggregate annual revenues due to price increases was a 5.5% limit on increases in the wage bill, not the wage rate. This meant that additional employees had to be balanced against funds for old workers. This 5.5 percent wage bill increase produced an allowable 3.3 percent increase in total costs.[12] The remainder of the 6 percent allowance was divided between a 2.5 percent increase in non-wage costs (the general goal for the entire economy) and a 1.7 percent factor to allow for increases in expenditures for new technology not directly billed to patient services. This was a residual intensity factor not specifically defined.

The 1.7 percent allowance for new technology and the 2 percent intensity allowance for cost reimbursement allowed for increases attributable to changes in the number of services and their method of provision. Table 6 shows increases in the intensity of hospital services for the years up to the beginning of the Economic Stabilization Program. As can be seen, these increases had fallen off from ahigh of 7.2 percent in 1968 to 4.5 percent in 1970.

TABLE 6.—*Estimated per diem "intensity" increases*

[In percent]

Year	Total	Excluding new technology factor
(1)	(2)	(3)[1]
1956 to 1965	3.2	1.8
1966	6.7	5.0
1967	7.6	5.9
1968	7.2	5.5
1969	5.5	3.8
1970	4.5	2.8

[1] Column (3) is derived by subtracting the 1.7 percent new technology factor from column (2), leaving just the intensity increases experienced in each year.

Source: 1972 Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund, p. 21, transmitted June 6, 1971, to the Speaker of the House of Representatives.

The other main feature of the Phase II regulations was a volume index which adjusted a hospital's level of allowable cost and revenues, as the number of days of care or admissions increased or decreased. It was this volume index which prevented the total revenue of a hospital from being fixed, regardless of the number of services rendered. It did, however, provide for a one-to-one correspondence between changes in volume and changes in allowable revenue and costs.

The Phase II system was designed for the short run and therefore, it could not deal completely with such factors as changes in the volume of services of new capital facilities.

It has always been recognized that the added cost of treating more patients, particularly in a well-functioning hospital, is far less than the average cost of treating all patients. As a hospital adds a few more patients, it is not necessary to add such items as more X-ray machines, nurses, or even beds. Therefore, the hospital that increased its volume of patients was permitted more allowable costs and revenues than it really needed to treat the additional patients. The requirement for cost justification meant that if these potential revenues were not actually spent, they had to be returned. Thus, there was still an incentive to spend.

The hospital that declined in volume of patients faced a different and more severe problem. If the decline in volume was 5%, expenses had to be reduced by a full 5%. However, because a significant portion of hospital costs is fixed in the short run, the effect of the Phase II volume adjustment was to take away some allowable costs that had to be incurred regardless of how many patients were served. The result was that many hospitals facing declines in volume had to dip into (and perhaps exhaust) reserves in order to meet operating expenses.

RESULTS UNDER PHASE II

The 13 months under Phase II saw a halving of increases in the hospital room and board rates. The semi-private room rate rose only 6.6% during 1972, and only 5.4% between November 1971 and January 1973.[12] Analysis of just this measure of cost alone would have led one to believe that the problem of health care cost inflation was over. Yet economists, as was demonstrated previously, caution that the average daily service charge omits a large and growing fraction of costs that grows differently. Therefore, it was necessary to review the performance of other indices of cost such as cost per patient day and cost per admission. It became clear that while the rate of increase in room and board rates declined by over 50% during Phase II, cost per adjusted patient day and cost per adjusted admission declined by much less—only about 25%. What appears to have happened was that hospitals were willing to sacrifice some part of price increase revenues from charge payors as long as they knew that cost reimbursers were still there to pay the majority of the bills.

The Phase II regulations produced some unusual results in hospitals especially during the extension periods of Phase III/IV in 1973. Hospital charge increases were contained, and revenue increases from charge payors reduced accordingly. On the other hand, costs continued to increase at almost the pre-ESP rates. To the extent that they found them reasonable, cost reimbursers were continuing to reimburse for all incurred costs, thereby assuming a relatively larger share of reimbursed expenses than they had in the past. Aside from the general implications to the system this result was of special concern to the public programs such as Medicare and Medicaid. Although it is difficult to explain the reasons behind this result with any precision, it is also clear that admissions increased under Phase II. Whereas in 1971 admissions had only risen .4 percent and patient days went down 1.5 percent, during 1972, admissions rose 2.6 percent and patient days increased 1.8 percent. The trend toward shorter length of stay did, however, continue.

PHASE IV CONTROLS

The Phase IV hospital controls switch the emphasis from individual prices as a proxy for costs to a more aggregate measure of price—total cost of a hospital stay. Under the Phase IV regulations, changes in the number of admissions is used as a means of adjusting the hospital's volume of services and allowable cost increases.

Two important departures from the Phase II system are the separate treatment of increased costs due to new and approved capital expenditure and the separation of the controls on inpatient and outpatient services. The Phase II system had included a single 6% control limit which was to be an average for every hospital service. For the institution that was not expanding, such a limit was more than sufficient to meet its expenses. However, new construction generally requires a new pricing structure, and that required an exception which was not easy to obtain. Further complicating the situation was the fact that it was often impossible to obtain financing unless some assurance could be given that when the project was completed, the hospital pricing structure could be changed. Such an assurance was generally unobtainable, even in the exceptions process.

The Phase IV health regulations now provide that an institution planning a capital expenditure of more than $100,000 can recover such costs if it has demonstrated the need for the project and the reasonableness of the costs. The approval of the state agency designated under section 1122 of the Social Security Act) comprehensive health planning provisions) is to be taken as demonstration of community need. This change makes the process more reasonable and manageable since capital allowances are included in addition to those allowed for current operations. The new provisions also reinforce the development of area-wide and State-wide planning activities rather than the continued predominance of Federal controls.

In order not to discourage the trend towards increased use of outpatient services, a separate limit of 6 percent was established for hospital outpatient services. Such a limit could be implemented either on an aggregate weighted (by service) basis, similar to the physician limitations, or a 6 percent increase across the board for all services. This provision does not place any limits on the amount of outpatient services provided.

The controls dropped the requirement of cost justifying all price increases in order to maximize managerial flexibility. The only internal cost constraint remaining is the 5.5% wage limitation plus all allowable fringe benefit increases.

THE 7.5 PERCENT LIMIT

The basic control of Phase IV is a limit of 7.5 percent on increases in charges and reimbursed cost per admission. These limitations are placed on the institution that does not plan, and does not in fact have a different volume of admissions than in the past year. Since no change in admissions is projected, this allowance really amounts to a budget prospectively set no higher than 7.5 percent above the prior year's operating budget (re-

[11] The Social Security Administration estimates (unpublished data) that in 1971 about 54% of all hospital care was paid for under cost reimbursement contracts.

[12] Labor costs in a hospital are estimated by the Social Security Administration to be about 60% of total costs.

[12] Consumer Price Index, Bureau of Labor Statistics.

membering that new capital expenditure, even for the same number of patients is still an add-on).

Experience during the first part of 1973 showed that 7.5 percent was likely to be a reachable target. Data for the first quarter of 1973 taken from the "Hospital Indicators Panel Survey of the American Hospital Association" showed expenses per adjusted admission rising at an annualized rate of 7.1 percent compared to a rate of 8.9 percent for 1972 (and a rate of 8.2 percent for the fourth quarter of 1972). Results for the first half of the year showed an increase of about 7.5 percent. This was a significant trend since the economy was generally decontrolled under voluntary Phase III guidelines. It was this period that was used for projecting increases for 1974 rather than a time when the whole economy was under strict controls.

The 7.5 percent control limit was based on three components:

1. an estimate of the cost of producing the same level of services as in the previous year;
2. a productivity offset to account for more efficient production of last years' services; and
3. an intensity factor to provide a margin for increases in the quantity of services (in addition to those which result from capital expenditures of more than $100,000).

In estimating the increased cost of producing the same level of services, there was no difficulty in estimating the impact of wage increases because the 5.5 percent guideline plus 0.7% fringe benefit limit is still in effect. Similarly, it was not difficult to determine the proportion of a hospital's cost imputed to labor and non-labor inputs. It is generally recognized that a 60% payroll factor and 40% non-payroll factor are reasonable.[14]

The problem of estimating an index of factor prices, as Feldstein has noted, was the most severe. The major reason for the difficulty is the lack of weights to be attributed to each of the major non-wage items purchased by a hospital.

Because such an index was not generally available it was necessary for the Cost of Living Council to develop such an index. This was accomplished by using three sources for weights for non-wage items, and a variety of sources for projections of inflation. Table 7 presents the categories selected (column 1), their estimated percentage of non-wage costs (column 2), the increases projected for 1974 using 1973 observations as of September 1973 (column 3), and their weighted contributions to non-wage and total cost increases (columns 4 & 5). This factor input price index has also been applied retrospectively to data for 1963–1972 and calculations have yielded the wage and price index with values for the last ten years. These values were used to adjust the expense data in Table 3 to come up with estimates of the increases in intensity expenditures per day and per admission in pre-control years.

[14] These ratios were first used by the Phase II Health Services Industry Committee and have also been used by the Phase IV Health Industry Advisory Committee.

TABLE 7

1974 PROJECTION OF INCREASES IN NONWAGE COST ITEMS

Category	Percent of nonwage costs	Likely increase	Contribution to increase in—	
			Nonpayroll costs	Total costs
(1)	(2)	(3)	(4)	(5)
		Percent	*Percent*	*Percent*
1. Fringe benefits	13.5	0.7		0.42
2. Drugs	7.0	1.2	0.08	.03
3. Raw food	7.0	15.0	1.05	.42
4. Utilities	4.2	8.3	.35	.14
5. Depreciation	9.5	3.5	.48	.19
6. Interest	4.1			
7. Insurance	1.9	3.3	.06	.03
8. Medical supplies	21.5	4.6	.99	.40
9. Other	31.3	5.0	1.57	.63
Total	100.0		4.61	2.26

The weights used in rows 2–7 of column (2) were calculated from a sample of S–52 forms on file at the Cost of Living Council. Rows 1 and 8 were estimated from data supplied by the New York State Hospital Association, which also confirmed the estimates from the sample of S–52's. The weights derived were later confirmed to be consistent with available data from the American Hospital Association. The increases projected in column (3) are either 1973–1974 CPI projections or estimates based on other available data. The CPI drugs index showed no significant changes in 1973, but an allowance was included to allow for some substitution of more expensive drugs outside of the "intensity" allowance discussed later.

Most interest and depreciation funds are covered under the "new capital" provisions and can be recovered without regard to the operating limit. However, an allowance was included to take into account the effect of small (less than $100,000) projects. The increases projected for insurance (3.3%), and utilities and fuel (8.3%) are the 1973 CPI projections. The events of the last few months, however, suggest that the amount of future increases in hospital fuel costs are uncertain. For this reason a separate notice is being issued with the regulations to permit hospitals to adjust their allowance because of increased fuel costs.

The increases projected for medical supplies (4.6%) is half the annual increase in the value of industry shipments as projected by the U.S. Department of Commerce for 1972–1980. This item may be somewhat misleading because many supply prices do not increase as new products enter the market (similar to drugs). However, half the increase in shipment values was included to permit a large part of the product substitution (without technological change) without resort to the intensity allowance. The final item, the residual, "other", was estimated to increase by 5 percent. This represents the average increase for 1973 in the CPI all items, less food. This index was selected because we had already taken account of increases in the cost of raw food. The process was repeated using the 1973 WPI, less agricultural products, with similar results. This projection was originally designed to be consistent with COLC goals, but there was enough rounding in the final calculations so that even increases of up to 8 percent could be accommodated within the same control limit. The original estimate of wage and input price increases (using 5% CPI increase) was 5.86%. Using a 6% assumption the factor goes up to 5.97% while 7% yields 6.11% and 8% yields 6.23%.

PRODUCTIVITY OFFSET

It was necessary to develop some offset of the Phase IV allowances to recognize increased productivity of hospital services. The three authors whose works are discussed here provided us with the background for the selection of the 1% tradeoff.

Richard Elnicki estimates average annual changes in labor productivity in three combined Connecticut hospitals from a high of 1.54% to a low of .62% over a 10 year period.[15] As part of an effort undertaken for the Cost of Living Council, Jim Jeffers, Professor of Economics at Iowa University,[16] developed an alternative methodology and used the same data as Elnicki. Although the estimates are not comparable, the work of both Elnicki and Jeffers indicate that the hospitals studied experience significant increases in factor productivity over the period. Jeffers' estimates ranged from around .5% to about 1.7%. Jerry Cromwell, Senior Economist of Abt Associates, also undertook a study for the Department of Health, Education and Welfare.[17] He estimated hospital productivity nationally over the 1964–1971 period for nine cost centers that incur slightly more than 50% of all hospital costs. The results show a positive productivity increase for all bed sizes, and an overall productivity gain, nationally, of 1.13 percent. It was therefore determined that a 1% tradeoff for productivity gains was not unreasonable.

INTENSITY ALLOWANCE

Table 6 shows the per diem intensity increases recorded by the Social Security Administration for the pre- and post-Medicare periods. Before Medicare, per diem intensity increases averaged 3.2% annually. We divided these increases by the value of our wage and price index for each year and recalculated the effective increase in intensity in terms of 1967 input prices, obtaining 3.6 percent. Then in establishing our intensity allowances for Phase IV we sought to repeat the calculations for 1974 so as to obtain an intensity allowance which would be similar to the long term pre-Medicare trend.

Since all calculations for Phase IV had been done on a per admission basis, we had to establish a bridge from per diem increases to per admission increases. We have also seen that under Phase II rules, costs for the first nine months of 1973 have risen 7.4% per admission and 8.9% per day (since length of stay has continued to drop at 1.3%). If that relationship were to continue, the basic Phase IV system is likely to produce a 9% per diem increase. It is also likely that the more liberal capital expansion provisions, case mix adjustment, and exceptions policies should inflate that figure another 1.0 to 1.5 percent. Thus, the total per diem increase should be in the range of 10.0 to 10.5 percent.

We assumed that 50% of the per diem cost increase would be due to intensity (5.0–5.25 percent).[18] When the 10.0 to 10.5 percent per diem increases are deflated by the 1974 value

[15] Richard Elnicki, "Effect of Phase II Price Controls on Hospital Services," "Health Services Research," Summary 1972, Pp. 106–116.

[16] James Jeffers, "Measurement of Changes in the Productivity of Inputs Producing Hospital Services," final report on contract CLC–73–7139, July 1, 1973, unpublished.

[17] Jerry Cromwell, "Hospital Productivity Trends in U.S. Short-term General Non-Teaching Hospitals," supported under contract number HEW–05–73–19, by the Division of Health Evaluation.

[18] See table four.

of the index, the resulting real increases in intensity allowed by the Phase IV regulations are 3.2–3.3 percent, which is comparable to the pre-Medicare intensity increases. That is, the 2.5% intensity allowance included in the 7.5% operating limit, is consistent with these intensity increases recorded before the Medicare/Medicaid inflationary cycle.

Combining the three factors, increased cost needed to produce last years' services, productivity offset, and intensity factor, leads to the following result:

TABLE 8

PHASE IV COST INCREASES

	Percent
Increased cost of unchanged operations	5.9
Payroll 6.0%×60% (weight) = 3.6%	
Non-payroll 5.7%×40 (weight) = 2.3%	
Adjustment for increased productivity	—1.0
Allowance for increased intensity	2.5
Net income increase	7.4

THE MARGINAL COST ASSUMPTIONS

Whereas Phase II assumed that almost all costs were variable as volume changed, the Phase IV controls took careful account of the differences that had to be recognized between fixed and variable costs. We used three pieces of research that could be categorized as studies in short run relationships of marginal (i.e., those that vary with output) to average costs, P. Feldstein, Lave and Lave, and M. Feldstein.[19]

J. Lave and L. Lave, "Estimated Cost Functions," "American Economic Review" June 1970, Pp. 370–395.

M. Feldstein, Economic Analysis for Health Service Efficiency, Amsterdam, North Holland Publishing Company, 1968.

Paul Feldstein used monthly cost and activity observations over a two year period for Gary (Indiana) Methodist Hospital. He found that the ratio of short run marginal cost to short run average cost ranged from 21–27%. Feldstein also estimated short run total cost functions for each of several hospital departments and concluded that in most cases, costs did not vary significantly with small increments in output.

The Laves used semi-annual observations on 74 Western Pennsylvania hospitals, and estimated an average cost function based on utilization, size, and a time trend. A second stage regressed the coefficients of the independent variables against a number of environmental factors (urban-rural, teaching status) to determine in each case the optimum set of explanatory variables according to the usual goodness of fit criteria. This technique of economic analysis yields a quantitative estimate of the amount of variation in costs explained by changes in volume of patients. The Laves also found evidence of slight economies of scale (services can be produced more cheaply as the number produced increases) and of an accelerating rate of cost inflation. They also found that marginal cost varied between 40–65% of average cost.

Martin Feldstein analyzed the cost implications of differences in the intensity of utilization of a given stock of facilities (Chapter 5). He was specifically concerned with the average and marginal costs of short-run increases in the rate of case-flow. The marginal cost of a case was found to be almost 21% of average cost, calculated at the mean values of the independent variables. Feldstein also calculated the MC/AC ratios for seven individual case-mix categories. The MC/AC ratios, by category, are: general medical, 0.17; pediatrics, 0.26; surgery, 0.21; ear-nose-throat, 0.47; gynecology, 0.03; obstetrics, 0.47; and others, 0.40. Feldstein also found a serious underutilization of the stock of hospital facilities in the short-run.

After evaluating the literature, with special emphasis on the above three studies, and with the assistance of the Bureau of Health Services Research and Evaluation of the Department of Health, Education, and Welfare, a marginal cost to average cost factor of 40% was included in the Phase IV regulations. If this adjustment were used from zero change in admissions, it would mean that an institution that was increasing in volume would be allowed only 40% of average cost and charge for each extra admission. The hospital that was declining in volume would be allowed to keep 60% of the average cost and charge of each lost admission, and recover the difference from the remaining patients.

There are, however, statistical indications that while the 40/60 ratio is a reasonable average, when volume of admissions increases the marginal cost may actually be somewhat higher, i.e., it costs more than 40% to service the increased admissions and that when volume is declining the fixed costs may be higher, i.e., a hospital cannot reduce its cost per case by 40%.[20] For this reason, and to reduce the need for hospitals to make charge adjustments for small changes in volume, a "zone of no adjustment" was created.

ZONE OF NO ADJUSTMENT

The imposition of the Phase IV volume adjustment is delayed for most hospitals, with the extent of the delay dependent on their size. For the first 2% increase in admissions for large hospitals (and 4% increase for small[21]) the 7.5% allowance is permitted over last year's per admission averages, with no adjustment required. That is to say, the hospital is allowed to assume that all costs are variable.

The large hospital that declines up to 5% in admissions (10% for small hospitals) is allowed to assume that all costs are fixed. That is to say, the hospital may keep its total budget at 107.5% of the last year's budget. Once volume changes go beyond these limits, the volume adjustment begins. The equations for calculating the percentage limits for each change in volume appear in the appendix. Much has been made of the marginal cost assumption and the potential harshness of the volume adjustment. The effect of the zone, however, is to postpone the volume adjustment and to liberalize the marginal cost assumption. Table 9 shows, for both large and small hospitals, the actual marginal cost assumption of the regulations, depending upon the change in volume that is actually experienced. A further modification in the volume adjustment formula is a limit on the required reduction in price for volume increases such that a hospital could impose at least a 3% increase in cost per admission. On the down-side a limit of 20% was imposed on the allowable cost increase per admission. These are shown in Table 9.

[19] P. Feldstein, "An Empirical Investigation of the Marginal Cost of Hospital Service," Chicago, University of Chicago, 1961.

[20] The American Hospital Association has been concerned with the 60–40 split of costs. They presented data that show that on the up-side, marginal costs are 80% of average costs and on the down-side, they are only 10–20% of average cost.

[21] A small hospital is defined as one with less than $2.5 million in budget or less than 4,000 admissions.

TABLE 9A.—*Increasing admissions allowance for variable costs and allowance per admission.*

[In percent]

Percent change admissions	Large hospital		Small hospital	
	Per admission	Variable cost	Per admission	Variable cost
0	7.50	----------	7.50	----------
+1	7.50	100	7.50	100
+2	7.50	100	7.50	100
+3	6.87	80	7.50	100
+4	6.26	70	7.50	100
+5	5.66	64	6.87	88
+6	5.07	60	6.28	80
+7	4.49	57	5.69	74
+8	3.92	55	5.11	70
+9	3.36	53	4.54	67
+10	3.00	52	3.98	64
+11	3.00	56	3.43	62
+12	3.00	60	3.00	65
+13	3.00	63	3.00	68
+14	3.00	66	3.00	70
+15	3.00	68	3.00	72

TABLE 9B.—*Decreasing admissions allowance for fixed costs and allowance per admission*

[In percent]

Percent change admissions	Large hospital		Small hospital	
	Per admission	Fixed costs	Per admission	Fixed costs
0	7.50	100	7.50	100
−1	8.59	100	8.59	100
−2	9.69	100	9.69	100
−3	10.83	100	10.83	100
−4	11.98	100	11.98	100
−5	13.16	100	13.16	100
−6	13.90	93	14.36	100
−7	14.67	88	15.59	100
−8	15.45	85	18.13	100
−9	16.24	82	19.49	100
−10	17.06	80	20.00	100
−11	17.89	78	20.00	91
−12	18.74	77	20.00	83
−13	19.61	75	20.00	77
−14	20.00	70	20.00	71
−15	20.00	65	20.00	67

CASE-MIX ADJUSTMENT

There has also been much concern about the flexibility of the Phase IV system when a hospital's patient-mix changes. As many hospital services are shifted to out-patient settings, and as more illnesses become treatable, hospital patient-mix will become generally more complex, and perhaps also more expensive. There can also be shifts among institutions, with certain hospitals becoming referral centers for difficult cases.

The Phase IV controls include adjustment of revenues and costs that recognizes the increased costs of a more complex patient-mix. It is not part of the basic control system, and is placed in force at the option of the hospital. It will not be used to penalize hospitals that shift to less complex patients and is a self-executing adjustment.

The patient-mix adjustment procedure relies on either of two standard patient allocation systems. In addition, a hospital may use another allocation system with prior COLC approval. The procedure to allocate charges and expenses works in the following way. The current year's distribution of patients is determined by the category list below, and last year's total admissions are restated in these proportions.

ALLOCATION OF PATIENTS

1. Medical, Surgical, Obstetrics, Pediatrics, Psychiatric; OR

2. H-ICDA diagnostic codes representing at least 85% of the hospital's admissions, the balance being included in a residual "other" category.

A restated "total charges" for the last year is then calculated using the actual charge per case (in each category) multiplied by the restated number of admissions in that category, with all the results added. The restated total budget is then divided by the actual total admissions to get a restated average charge per admission for the last year. The percent by which this amount exceeds last year's actual average charge per admission is the increment which could be added to the basic control allowances for charges and expenses. There is, however, a potential bias in the assumption that expenses due to patient-mix changes will change by the same percentage as the charges. The more likely case is that the difference in costs would be greater than the difference in charges. This is due to the fact that charges for high cost items are often redistributed to room and board rates. Patients do not pay $800 per day for coronary care. They pay perhaps $250, with all the other patients absorbing $1–2 in their room rates. Therefore charge ratios might not reflect cost differences. If a hospital felt that the data were indeed not reflective of a particular situation, it could request an exception.

INCENTIVES UNDER PHASE IV

As in any system of control based on a particular unit of output, the incentive is to increase the volume of that unit. That is true of the Phase IV system as it was under Phase II. But Phase IV includes three features to minimize such undesirable incentives:

(1) It is more difficult to create an unnecessary admission than to extend each hospital stay one extra day or order some extra tests "just in case".

(2) The simple outpatient limitation (with no intensity limitation) does not inhibit the trend toward more services being performed on an outpatient basis.

(3) Finally, and most importantly, the hospital that increases its volume of admissions beyond the zone is required to recognize that all costs are not variable, and that some economies of scale should be realized. In contrast, the Phase II system allowed free rein to increase costs and charges one-for-one with volume increases.

The Phase II system worked in such a way as to have undesirable effects on the hospital that had declining length of stay or declining occupancy. The Phase IV regulations changed that situation. The Phase IV zone on the down-side is structured to allow hospitals to maintain their budgets even if volume decreases. This volume reduction might have been unanticipated, but it might also have been the result of an active program of utilization reivew or a movement to pre-admission testing. Either way, the institution is not forced into a position of having to stop such desirable and Federally required activities or face financial ruin.

Finally, the control limit itself was designed to provide for the needs of hospitals, although it will be necessary to exercise some measure of cost consciousness in order to continue operations without financial difficulties. The capital exception and patient-mix adjustment are added measures of flexibility to permit desirable growth and change in the industry.

APPENDIX

There are four regions of volume changes, and hence operating allowances, between the 20% ceiling and 3% floor of the Phase IV regulations. For those who wish to do their own calculations we list below the relevant equation for each region.

$$\text{Limitation}=\frac{ADM_B^{1.075}\left[1-\left(\frac{A}{ADM_B}\right)\cdot(C\cdot ADM_B)-(ADM_C)\right]}{ADM_C}-1$$

REGION 2—Negative change in admissions within the zone.

$$\text{Limitation}=\frac{ADM_B\cdot 1.075}{ADM_C}-1$$

REGION 3—Positive or no change in admissions within the zone—7.5% limitation.

REGION 4—Positive change in admissions beyond the zone (minimum allowance is 3%).

$$\frac{1.075}{ADM_C}\cdot[(C\cdot ADM_B)+.4(ADM_C-(C\cdot ADM_B))]-1$$

NOTATION

ADM_B=Number of admissions in the base year.
ADM_C=Number of admissions in the control year.
C=Zone level, defined as ratio (e.g., −5% zone is .95, +2% is 1.02).
1.075=Base standard.

7. In 6 CFR Part 155, § 155.21(c) and (d) is amended to read as follows:

§ 155.21 Purpose and scope.

* * * * *

(c) Except as provided in § 150.415 with respect to health insurers, insurers subject to Subpart M of Part 150 of this chapter shall make all filings pursuant to that subpart and shall file requests for interpretation with the Cost of Living Council, Insurance Division, 2000 M Street, N.W., Washington, D.C. 20508.

(d) Institutional providers of health services subject to Subpart O and persons subject to Subpart R of Part 150 of this chapter shall file requests for interpretation and shall make all other filings with the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508.

8. In 6 CFR Part 155, § 155.41(a) is amended to read as follows:

§ 155.41 Purpose and scope.

Exceptions from the provisions of Part 150 of this title may be granted for the purpose of preventing or correcting a serious hardship or gross inequity.

(a) All persons requesting exceptions shall file their applications with the key IRS District Office which serves the district in which their corporate headquarters are domiciled except that persons who are: (1) Insurers subject to subpart M of part 150 of this chapter, shall file with the Cost of Living Council, Insurance Division, 2000 M Street, N.W., Washington, D.C. 20508 and (2) Institutional providers of health services subject to subpart O and persons subject to subpart R of Part 150 of this chapter, shall file with the Office of Health, Cost of Living Council, 2000 M Street, N.W., Washington, D.C. 20508. All requests for exception, wherever filed, must conform to the requirements set out in § 155.11.

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